

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)	
)	
NATALIA KARASIK, RAHUL)	
SURYAWANSHI and ELIE CHAMI)	<i>Theodore P. Charney</i> for the Plaintiffs
Plaintiffs)	
- and -)	
)	
YAHOO! INC. and YAHOO! CANADA)	<i>Craig Dennis and Mark Evans</i> for the
CO.)	Defendants
Defendants)	
)	
)	HEARD: March 3, 2020

PERELL, J.

REASONS FOR DECISION

- [1] This is an unusual and rare motion for a proposed class action, although it is a common motion often brought in Commercial Court.
- [2] It is a consent motion for a representation order in a proposed class proceeding that has not yet been certified as a class action pursuant to the *Class Proceedings Act, 1992*.¹
- [3] In the proposed class action, the proposed representative plaintiffs, Natalia Karasik, Rahul Suryawanshi, and Elie Chami, sue Yahoo! Inc. and Yahoo! Canada Co. (collectively “Yahoo”).
- [4] Pre-certification, the Plaintiffs seek an order appointing Charney Lawyers PC as representative counsel in the dissolution of Altaba Inc. under the corporate law of the State of Delaware.
- [5] Pre-certification, Charney Lawyers propose to act on behalf of the creditors who have claims against Yahoo in the proposed national class action commenced in Ontario against Altaba Inc.
- [6] The proposed national class action in Ontario was commenced in 2016 against Yahoo in respect of privacy breaches. There are about 5 million persons across Canada who are included in the proposed class definition and whose personal information was allegedly compromised in the

¹ S.O. 1992, c. 6.

privacy breaches.

[7] In 2017, Altaba, formerly known as Yahoo, sold Yahoo to Verizon Communications Inc., but it retained fifty percent of the liabilities of Yahoo for the privacy breaches that are the subject matter of the class action.

[8] On October 4, 2019, however, Altaba began to wind itself up, and it has elected to wind up its affairs and distribute its assets to its shareholders while setting aside sufficient funds to pay potential creditor claims. This is in accordance with Delaware corporate law.

[9] Altaba and Charney Lawyers, proposed class counsel have reached an agreement on a sum of funds to be set aside by Altaba as a holdback against claims for damages arising out of the privacy breaches in the class action in Ontario.

[10] For Charney Lawyers to enter into this holdback agreement on behalf of all creditors; the putative Class Members whose personal information was compromised, it seeks a pre-certification representation order.

[11] The court has authority under Rule 10.01 of the *Rules of Civil Procedure*,² to make a representation order, including the jurisdiction to appoint representative counsel. This is possible when persons who have an interest in or may be affected by a matter or a proceeding cannot be readily ascertained, found or served or where it appears necessary or desirable to make the order. Rule 10.01 states:

REPRESENTATION OF AN INTERESTED PERSON WHO CANNOT BE ASCERTAINED

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

² R.R.O. 1990, Reg. 194

Settlement Affecting Persons who are not Parties

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons. R.R.O. 1990, Reg. 194, r. 10.01 (3).

[12] Further, pursuant to s. 12 of the *Class Proceedings Act, 1992*, the Court may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[13] In the circumstances of the immediate case, a holdback, which would, in effect, provide security for the creditors' claims, is obviously in the best interests of the putative Class Members. They all share a similar interest in achieving a fair holdback amount. As representative counsel, Charney Lawyers could represent their shared interest by negotiating a holdback amount to satisfy claims made in the proposed national class action commenced in Ontario.

[14] Without a representation order, each creditor of Altaba resident in Canada would arguably be required to make an individual claim against Altaba in the proceedings in the State of Delaware. Given the large size of the putative Class, it is not practical for each putative class member to file a claim.

[15] If the class action proceeds to trial and a judgment is awarded, there may be no means to enforce the judgment against Altaba, absent a holdback. Therefore, a representation order is required to protect the interest of the proposed class members.

[16] Charney Lawyers has a *sui generis* relationship with the putative Class pre-certification, as proposed class counsel in the proposed national class action commenced in Ontario. Charney Lawyers has also agreed with Altaba to receive a fixed sum for representation in the amount of \$60,000 US and has a source of funding for representation that can be identified.

[17] Representation orders are a common phenomenon in proceedings under the *Companies Creditors Arrangement Act*.³

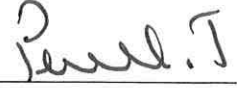
[18] In *Re CanWest Publishing Inc.*,⁴ Justice Pepall stated that factors that have been considered by courts in granting these orders include: (a) the vulnerability and resources of the group sought to be represented; (b) any benefit to the companies under CCAA protection; (c) any social benefit to be derived from representation of the group; (d) the facilitation of the administration of the proceedings and efficiency; (e) the avoidance of a multiplicity of legal retainers; (f) the balance of convenience and whether it is fair and just, including to the creditors of the Estate; (g) whether

³ R.S.C. 1985, c. C-36. See: *Re Urbancorp Inc.*, 2016 ONSC 5426; *Re CanWest Publishing Inc.*, 2010 ONSC 1328.

⁴ 2010 ONSC 1328.

representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and (h) the position of other stakeholders and the Monitor.

[19] Many of the factors set out by Justice Pepall apply *mutatis mutandis* in the circumstances of the immediate case and justify the granting of the Order. I, therefore, grant the requested Order.

A handwritten signature in black ink, appearing to read "Perell, J.", written in a cursive style.

Perell, J.

Released: March 5, 2020

CITATION: Karasik v. Yahoo! Inc., 2020 ONSC 1440
COURT FILE NO.: CV-16-566248
DATE: 2020/03/05

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**NATALIA KARASIK, RAHUL SURYAWANSHI
and ELIE CHAMI**

Plaintiffs

- and -

YAHOO! INC. and YAHOO! CANADA CO.

Defendants

REASONS FOR DECISION

PERELL J.

Released: March 5, 2020

KARASIK et al.

v. YAHOO! INC. et al.

Plaintiffs

Defendants

Court File No. CV-16-566248-00CP

March 3, 2020

This is a motion for a representation order pursuant to Rule 10 and s12 of the Class Proceedings Act. There is also an oral consent motion to amend the style of cause to delete David Buni as a proposed representative plaintiff. For written reasons to follow, I grant the representation Order. I also grant the motion to amend the style of cause. I have signed the Orders.

Perell J.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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