

Court File #: 3795/14 CP

Short Title of Proceeding:

Cygnus Electronics Corporation v. Panasonic Corporation and 32 other companies

Nature of Motion: Motion by plaintiff to discontinue as against 6 named defendants.

Date Heard: November 29, 2016 at London.

Endorsement:

[1] The plaintiff seeks approval to discontinue this action as against six named defendants pursuant to s. 29 of the *Class Proceedings Act, 1992*, S. O. 1992, c. 6 (CPA). Incidental to that request, the plaintiff seeks leave to file an Amended Amended Statement of Claim. Finally, it also seeks an order that notice to the putative class members of the discontinuance under ss. 19 and 29 of the CPA is not necessary.

[2] First, the plaintiff wishes to discontinue the action as against the defendant, Sanyo North America Corporation (SNAC) because SNAC has merged with another existing defendant, Panasonic Corporation of North America (PCNA). Plaintiff's counsel has been advised by counsel for PCNA that PCNA is legally responsible for any obligations of SNAC, has all of the documents of SNAC and has all of the personnel of SNAC following the merger.

[3] I agree that it is appropriate to discontinue without costs in these circumstances. I questioned whether there would be a need for examination for discovery of an additional representative of PCNA given that the two companies operated separately during the relevant time period. That is an issue counsel may wish to address in the Litigation Plan.

[4] The other five defendants are each subject to separate Tolling and Standstill Agreements. Those agreements were referred to in the affidavit filed but not attached for confidentiality reasons. Copies of the agreements were provided to me at the hearing of the motion.

[5] The affidavit of Ms. Legdon refers to information obtained from counsel for each defendant but without naming the individual who provided that information. I am

assured by plaintiff's counsel that the information came from one of the counsel on record for that defendant. She offered to file a further affidavit to remedy this deficiency.

[6] Plaintiff's counsel indicates that at present, they are satisfied that there is no basis for a claim against each of these defendants. The Tolling and Standstill Agreements protect the class by suspending the running of the limitation period and allow for the adding the defendant back into the action if information does come to light within 30 days of certain defined events. This discontinuance will streamline the litigation by weeding out defendants against whom no claim is evident.

[7] I am satisfied that the action as against the five defendants should be discontinued without costs in accordance with the terms of the Tolling and Standstill Agreements pertaining to each defendant respectively. There is no prejudice to the putative class members and the agreements leave open the door to rejoining any of the five defendants if new information comes to light within the time limits in the agreements.

[8] Plaintiff's counsel assured me that they have done their due diligence and that they are alive to the need to continue to consider the available evidence as it arises in relation to these defendants.

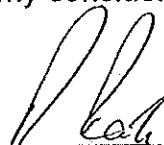
[9] As a result of the discontinuance, the plaintiff seeks to amend its pleading and leave is granted for that purpose.

[10] With respect to notice to the class of the discontinuance, I agree that notice is not required under s. 19 or s. 29 of the *CPA*, but the web-page maintained by plaintiff class counsel needs to contain sufficient information to ensure that putative class members can ascertain the fact of discontinuance, the material terms of the Tolling and Standstill Agreements as provided to the court in Ms. Legdon's affidavit and the order made.

[11] There are no costs of this motion.

[12] Counsel are to provide a draft order for my consideration.

Date: November 29, 2016



Mr. Justice R. Raikes

ELECTROLYTIC AND FILM CAPACITORS CLASS ACTIONS

Cygnus Electronics Corporation v. Panasonic Corporation, et al. (Court File No. 3795/14 CP)
Cygnus Electronics Corporation et al. v. Hitachi AIC Inc., et al. (Court File No. 1573/16 CP)
Allott v. AVX Corporation, et al. (Court File No. 1272/16)

**November 29, 2016 Case Conference before Mr. Justice Raikes
List of Counsel Attending**

Jonathan J. Foreman and Sarah A. Bowden
Harrison Pensa, Lawyers for the Plaintiffs

Brian Whitwham
Miller Thomson LLP
Lawyers for the Defendant – AVX Corporation (Electrolytic and Film)

Kevin Wright
DLA Piper (Canada) LLP
Lawyers for the Defendants – Elna America Inc. and Elna Co., Ltd. (Electrolytic) and Elna America Inc. (Film)

Eliot Kolers
Stikeman Elliott LLP
Lawyers for the Defendants - Hitachi Canada, Hitachi Chemical Co., Ltd. and Hitachi Chemical Company America, Ltd. (Electrolytic and Film) and Hitachi AIC Inc. (Film)

Davit Akman
Borden Ladner Gervais LLP
Lawyers for the Defendants – KEMET Corporation and KEMET Electronics Corporation (Electrolytic and Film)

Adam S. Goodman
Dentons Canada LLP
Lawyers for the Defendant – Matsuo Electric Co., Ltd. (Electrolytic and Film)

Mark Sheeley
Osler, Hoskin & Harcourt LLP
Lawyers for the Defendant - NEC Canada Inc. (Electrolytic)

Ian Matthews
Lax O'Sullivan Lissus Gottlieb LLP
Lawyers for the Defendants – NEC Tokin America Inc. and NEC Tokin Corporation (Electrolytic)

Sze Pui Florence Chan
McMillan LLP
Lawyers for the Defendants - Nichicon (America) Corporation and Nichicon Corporation (Electrolytic and Film)

Gordon Capern and Michael Fenrick

Paliare Roland Rosenberg Rothstein LLP

Lawyers for the Defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation (Electrolytic and Film)

Ian Thompson

Bennett Jones LLP

Lawyers for the Defendants – Panasonic Canada Inc., Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Co., Ltd. and Sanyo North America Corporation (Electrolytic and Film) and Sanyo Electronic Device (U.S.A.) Corp. (Film)

Paul Martin

Fasken Martineau DuMoulin LLP, Lawyers for the Defendants – ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC (Electrolytic and Film)

W. Michael G. Osborne

Affleck Greene McMurtry LLP

Lawyers for the Defendants – Rubycon America Inc. and Rubycon Corporation (Electrolytic and Film)

Robert Kwinter

Blake, Cassels & Graydon LLP

Lawyers for the Defendants – Samsung Electro-Mechanics, Samsung Electro-Mechanics America, Inc., and Samsung Electronics Canada Inc. (Electrolytic) and Soshin Electric CO., Ltd. and Soshin Electronics of America Inc. (Film)

Donald Houston and Claire Seaborn

McCarthy Tetrault LLP

Lawyers for the Defendants – Vishay Intertechnology Inc. and Milestone Global Technology, Inc. d/b/a Holystone International (Electrolytic and Film)

J. Thomas Curry and Paul-Erik Veel

Lenczner Slaght Royce Smith Griffin LLP

Lawyers for the Defendants – Fujitsu Canada Inc. and Fujitsu Ltd. (Electrolytic)

Casey Halladay

McMillian LLP

Lawyers for the Defendant – Nissei Electric Co., Ltd. (Film)

Sandra Forbes

Davies Ward Phillips & Vineberg LLP

Lawyer for the Defendant – Nitsuko Electronics Corporation (Film)

David Gadsden and Matt Saunders

Baker & McKenzie

Lawyers for the Defendants – Okaya Electric Industries Co., Ltd and Okaya Electric America, Inc. (Film)

Nicholas Hooge

Farris, Vaughn, Wills & Murphy LLP

Lawyers for the Defendants – Shizuki Electric Co., Ltd. and American Shizuki Corporation (Film)

Mark Evans

Dentons LLP

Lawyers for the Defendants – Shinyei Kaisha, Shinyei Technology Co., Ltd, Shinyei Capacitor Co., Ltd. and Shinyei Corporation of America (Film)