

Court File #: 3795/14 CP

Short Title of Proceeding:

Cygnus Electronics Corporation v. Panasonic Corporation and 32 other companies

And Court File #: 1573/16 CP

Short Title of Proceeding:

Cygnus Electronics Corporation and Sean Allott v. Hitachi AIC Inc. and 7 other companies

Nature of Motion:

Motion by plaintiffs to consolidate the above two actions

Position of Defendants:

All of the defendants with counsel take no position.

Date Heard: November 29, 2016.

Endorsement:

[1] The plaintiff moves to consolidate two actions involving the same alleged conspiracy. The first action was commenced in 2014. All named parties in that action have been served. A motion to discontinue as against six defendants was heard immediately before this motion and was granted.

[2] The second action was commenced in 2016. Three of eight defendants have been served. Time for service of the remaining defendants has been extended as a precaution given that they are situated in countries that are not party to the Hague Convention.

[3] The second action was initiated with the intent that it would be consolidated with the earlier action. This was done to avoid a motion for leave to amend to add parties to the 2014 action with the procedural delays that would entail.

[4] While I understand counsel's desire to move matters along and to minimize expense, the practice of issuing a separate claim and seeking to consolidate is a less than ideal approach especially when the rules allow for amendment to add parties. Although I granted the order to consolidate in these particular circumstances, counsel should not take that as broad approval for the method of proceeding taken here.

[5] I am unaware of any case where consolidation has been ordered at such an early stage, viz. before pleadings are closed and before all defendants are even served. If this was a motion involving non-class proceedings, I would be inclined to say the motion is premature.

[6] However, s. 12 of the Class Proceedings Act grants the case management judge broad discretion to make such orders as are appropriate to efficiently manage the proceeding. My order is made under that mandate, not under rule 6.01.

[7] The allegations in the two actions are virtually identical. The claims arise from the same occurrences or series of occurrences and assert the same causes of action. Thus, the facts and law are common. Consolidation will permit the litigation to move ahead to certification in merged rather than disjointed fashion.

[8] As a consequence of the consolidation, a single new title of proceeding is necessary as is delivery of an amended pleading.

[9] I signed an order provided by counsel dealing with consolidation, the title of proceeding and amendment of the plaintiffs' pleading with an endorsement to follow. This is that endorsement.

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)