

CITATION: Allott v. AVX Corporation, 2020 ONSC 7202
COURT FILE NO.: 1272/16 CP
DATE: 20201123

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SEAN ALLOTT, Plaintiff

AND:

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

Court File No: 3795/14CP

RE:

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT
Plaintiffs

AND:

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; NEC TOKIN CORPORATION; NEC TOKIN AMERICA INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA INC.; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUO ELECTRIC CO., LTD.; TOSHIN KOGYO CO., LTD.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA, INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD. , Defendants

BEFORE: Justice R. Raikes

COUNSEL: J. Foreman, J.M. Metrailler, S. Bowden - Counsel, for the Plaintiffs

John Rook, Emrys Davis, and Ian Thompson Counsel, for the Panasonic Defendants

Eric Dufour, Pascale Cloutier, and Brian Whitwham Counsel, for AVX Corporation

Kevin Wright, Emily Snow, and Todd Shikaze Counsel, for the Elna Defendants

J. Thomas Curry and Paul-Erik Veel Counsel, for the Fujitsu Defendants

Katherine Kay, Eliot Kolers, and Mark Walli Counsel, for the Hitachi Defendants

Davit Akman, Carolyn Wong, and Moshe Grunfeld Counsel, for the Kemet Defendants

Adam Goodman and Chloe Snider Counsel, for Matsuo Electric Co. Ltd.

Dr. Neil Campbell and William Wu Counsel, for the Nichicon Defendants

Gordon Capern, Michael Fenrick, and Daniel Rosenbluth Counsel, for Nippon Chemi-Con and United Chemi-Con

Paul Martin and Vera Toppings Counsel, for the ROHM Defendants

W. Michael Osborne and Alexandra Murphy Counsel, for the Rubycon Defendants

Robert Kwinter Counsel, for the Samsung Defendants

Kenji Kasahara Counsel, for Toshin Kogyo Co. Ltd.

Don Houston, Peter Leigh, and Gillian Kerr Counsel for the Holy Stone Defendants

Kevin Chen Counsel, for Nissei Electric Co. Ltd.

Mark Evans and Sandra (Sandy) Walker Counsel, for the Shinyei Defendants
Nicholas Hooge, Robert Anderson, and Ludmila Herbst Counsel, for the Shizuki Defendants
Robert Kwinter Counsel, for the Soshin Defendants
Don Houston, Peter Leigh, and Gillian Kerr Counsel for the Holy Stone Defendants

HEARD: November 9, 2020

ENDORSEMENT

- [1] These two actions are proposed price fixing class proceedings. Court file 3795/14CP deals with electrolytic capacitors. Court file 1272/16CP relates to film capacitors. Some defendants are common to both actions. There are parallel class proceedings in British Columbia and Quebec.
- [2] The plaintiffs have entered into a settlement agreement with Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc. and Sanyo Electric Co., Ltd. (“the Panasonic defendants”) to settle their claims against those defendants on a Canada wide basis.
- [3] The plaintiffs move for certification for settlement purposes in both actions, for approval of the notices to class members of the settlement and certification, approval of the notice plan, and appointment of RicePoint Administration Inc. to disseminate the notices in accordance with the plan.
- [4] There have been settlements with other named defendants in each action. Certification for settlement purposes was ordered and those settlements were approved. The opt-out periods have expired in both actions.
- [5] The Panasonic defendants consent to the relief requested; in fact, that relief forms part of the terms of the settlement.
- [6] There remain several defendants in each action who have not settled. They take no position on the motions brought. The proposed orders contain a specific provision designed to ensure that their positions and interests in the litigation are not adversely affected by certification or the settlement.

Certification

- [7] The test for certification is set out in s. 5 of the *CPA*. The burden rests on the plaintiff to satisfy all the criteria: *AIC Limited v. Fischer*, [2013] S.C.R. 949 at para. 48. Certification is mandatory where the requirements of s. 5(1) are satisfied: *Hurst v. Berkshire Securities Inc.*, [2006] O.J. No. 3647 (S.C.J.) at para. 11.
- [8] Section 5(1) states:

5 (1) The court shall certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - i. would fairly and adequately represent the interests of the class,
 - ii. has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - iii. does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[9] The test for certification is relaxed in the context of a settlement approval. The same factors are considered but the test is not as rigorously applied: *Currie v. McDonald's Restaurants of Canada Ltd.*, 2006 CarswellOnt 1213 (S.C.J.), at para. 18; *CSL Equity Investments Ltd. v. Valois*, 2007 CarswellOnt 2521 (S.C.J.), at para. 5.

[10] I have previously certified both actions for settlement purposes in respect of other defendants. The class definition and common issue proposed on the motions before me are the same as previously approved. I observe that the evidence filed is substantially the same as that on the earlier motions. Nothing has materially changed. I found then that the criteria for certification were met and there is no reason to redo that analysis. Suffice to say that I am satisfied on a balance of probabilities that each of the criteria has been established.

Notices and Notice Plan

[11] Counsel have submitted proposed short and long version notices to the class that will be run in one national English and one national French language newspaper. In addition, they propose, *inter alia*, notice through a news release, Banner advertising through social media, notice to non-profit organizations whose members may be affected, notices posted on a dedicated website and on counsel's own website.

[12] During submissions I suggested some minor modifications to the notices provided and to the plan of dissemination for the notice of certification and the settlement approval hearing.

Counsel agreed to those changes and subsequently provided me with a draft order that embodies the changes.

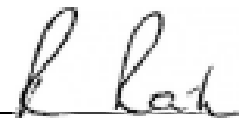
- [13] I am satisfied that the notices and plan of dissemination are reasonable and appropriate in this case. They employ a multi-media strategy to promote notice to members of the class in Canada. There is a very real prospect that the fact of certification and the terms of the settlement including the date for the settlement approval hearing and how to object will come to attention of class members.

Appointment of Administrator

- [14] RicePoint is known to this court and has fulfilled the same duties for other settlements. I appoint RicePoint to disseminate the notices in accordance with the approved plan of dissemination.

Contingent on Parallel Orders in British Columbia and Quebec

- [15] The settlement with the Panasonic defendants is contingent upon certification/authorisation and eventual approval of the settlement by courts in Ontario, British Columbia, and Quebec. Accordingly, my order is contingent upon parallel orders being made by the courts in those Provinces.
- [16] If the settlement is ultimately not approved by all three courts or is otherwise terminated in accordance with the terms of the settlement agreement, this order will be set aside and declared null and void and of no effect. It will be as if this motion and the settlement never occurred, subject only to any further notice to class members to alert them to that fact.



Justice R. Raikes

Date: November 23, 2020