

Court File # 1272/16 CP

Short Title of Proceeding:

Sean Allott v. AVX Corporation and 42 other companies

Nature of Motion:

Motion by plaintiff to discontinue action as against four defendants.

Date Heard: November 29, 2016.

Endorsement:

[1] The plaintiff moves pursuant to s. 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (*CPA*) for leave to discontinue the action as against four defendants as follows:

- i. As against Vishay Intertechnology Inc. ("Vishay") on a without prejudice and without costs basis in accordance with the Tolling and Standstill Agreement; and
- ii. As against Sanyo Electric Co., Ltd., Sanyo Electric Device (U.S.A.) Corp. and Sanyo North America Corporation (collectively "Sanyo") on a with prejudice and without costs basis.

[2] The plaintiff also seeks to amend his pleading as a consequence of the discontinuance and seeks an order that notice is not required under s. 19 and s. 29 of the *CPA*.

[3] Dealing first with the Sanyo defendants, the affidavit material filed indicates that plaintiff's counsel is satisfied that Sanyo did not manufacture or sell film capacitors during the relevant time period. Accordingly, they should not be defendants.

[4] The plaintiff is represented by experienced counsel who have done their due diligence. I am satisfied that there would be no prejudice to the class of discontinuing a claim against defendants for which there is no evidentiary basis to proceed. I grant leave to discontinue against the Sanyo defendants with prejudice and without costs.

[5] Turning to Vishay, the parties have entered into a Tolling and Standstill Agreement by which the claim is discontinued but the plaintiff can move to add the Vishay to the action in future provided he makes that election in a timely manner according to the terms of the agreement.


[6] I am satisfied that there is no prejudice to the class by the without prejudice, without costs discontinuance against Vishay having regard to the safeguards in the agreement. The plaintiff would not seek this relief now if he had any evidence that Vishay was a party to the alleged conspiracy. The agreement preserves that right for a period of time in case information comes to light.

[7] I approve the discontinuance of the action as against Vishay on a without prejudice and without costs basis in accordance with the agreement pursuant to s. 29 of the CPA. Leave is also give to deliver an Amended Statement of Claim in the form attached as Schedule "A" to the Notice of Motion.

[8] With respect to notice to the class, 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 Agreement as provided to the court in Ms. Legdon's affidavit, the order and endorsement made.

[9] There are no costs of this motion.

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 Lisus 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)