

CANADA
PROVINCE OF QUÉBEC
District of Montréal

SUPERIOR COURT

Class Action

No.: 500-06-000923-181

GAY HAZAN,

Plaintiff

vs.

MICRON TECHNOLOGY INC.,

-and-

**MICRON SEMICONDUCTOR PRODUCT
INC.,**

-and-

SAMSUNG ELECTRONICS CO., LTD.,

-and-

SAMSUNG SEMICONDUCTOR INC.,

-and-

**SAMSUNG ELECTRONICS CANADA
INC.,**

-and-

**SK HYNIX INC. (formerly known as
HYNIX SEMICONDUCTOR INC.),**

-and-

**SK HYNIX AMERICA, INC. (formerly
known as HYNIX SEMICONDUCTOR
INC.)**

Defendants

**DE BENE ESSE APPLICATION BY THE DEFENDANTS SAMSUNG
ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR INC., AND
SAMSUNG ELECTRONICS CANADA INC. FOR DECLINATORY
EXCEPTION IN ORDER TO LIMIT THE PROPOSED CLASS
(Articles 167 and 576 CCP and Article 3148 CCQ)**

TO THE HONOURABLE JUSTICE DONALD BISSON, S.C.J., THE DEFENDANTS
SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR INC., AND
SAMSUNG ELECTRONICS CANADA INC. STATE AS FOLLOWS:

I- INTRODUCTION

1. The Defendants Samsung Electronics Co., Ltd., Samsung Semiconductor Inc. and Samsung Electronics Canada Inc. (collectively referred to as "**Samsung**") intend to contest the authorization of the present class action proceedings (the "**Application**").
2. Should this Honourable Court authorize the bringing of the Class Action, Samsung submits that the proposed class, as defined in the Application for Authorization to Institute a Class Action dated April 30, 2018 (the "**Application**"), should be limited to Quebec residents, given this Court lacks jurisdiction over non-residents of Quebec, as further detailed below.

II- PLAINTIFF'S CLAIM

3. Plaintiff filed the Application on behalf of the following members (the "**Proposed Class**"):

All persons or entities in Canada (subsidiarily in Quebec) who, between at least June 1, 2016 and February 1, 2018, acquire dynamic random-access memory ("**DRAM**") directly from one of the Defendants (the "**Direct Purchasers**") or who acquired DRAM and/or products containing DRAM either from a Direct Purchaser or from another indirect purchaser at a different level in the distribution chain (the "**Indirect Purchasers**"), or any other Group(s) or Sub-Group(s) to be determined by the Court;

4. Plaintiff alleges he and the class members artificially paid inflated prices for DRAM and products containing DRAM as a result of an alleged conspiracy among defendants and damages are sought as a result of the alleged anti-competitive conspiracy.
5. The Application seeks injunctive relief, compensatory damages and punitive damages for the Proposed Class members.

III- LACK OF JURISDICTION OVER NON-RESIDENTS OF QUEBEC

6. Samsung respectfully submits that this Court lacks jurisdiction over the Class Action as regards non-residents of Quebec.
7. In order to include non-residents of Quebec in the Class Action, this Court must have jurisdiction over each claim, taken individually. Article 3148 of the Civil Code of Quebec ("CCQ") is the provision setting out the criteria which grant jurisdiction to Quebec courts.
8. Samsung submits that none of the criteria contained in Article 3148 CCQ have been met as regards non-residents of Quebec.
9. The Application evidences that:
 - a) Samsung Electronics Co., Ltd. is a legal person having its head office at 129, Samsung-ro, Yeongtong-gu, in the City of Suwon, Province of Gyeonggi, Republic of Korea;
 - b) Samsung Semiconductor, Inc. is a legal person having its head office at 3655 North First Street, in the City of San Jose, in the State of California, in the United States of America;
 - c) Samsung Electronics Canada Inc. is a legal person having its head office at 2050 Derry Road West, in the City of Mississauga, Province of Ontario;
10. As a result of the foregoing, none of the Samsung Defendants has its head office in Québec and jurisdiction of Quebec courts is therefore not justified under Article 3148(1) CCQ.
11. As appears from the Application and from Exhibit R-3, which is an excerpt of the "Registraire des entreprises du Québec", Samsung Electronics Canada Inc. has its head office in Ontario and has an elected office in Québec, which however does not in itself grant jurisdiction to the Quebec courts.
12. In addition, the Application contains no allegation whatsoever that the object of the litigation would be connected in any way with Samsung's activities in Quebec. As

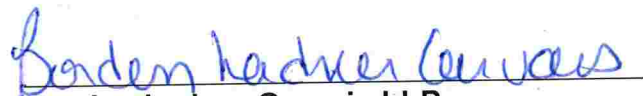
regards a non-resident of Quebec, the Application contains no allegation of any connection with the province of Quebec.

13. Regarding Article 3148 (3) CCQ, the Application contains no allegation that any non-resident of Quebec suffered damages in Quebec or that the alleged faults would have been committed in Quebec.
14. Finally, the Application contains no allegation that the criteria set out in paragraphs (4) and (5) of Article 3148 CCQ are met, or even applicable, in the context of this Class Action.
15. Therefore, Article 3148 CCQ cannot justify a Proposed Class including non-residents of Quebec. Samsung respectfully submits that given the lack of any real and substantial connection to Quebec this Court lacks jurisdiction over non-residents of Quebec.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- A. **GRANT** the present *De Bene Esse Application for Declinatory Exception in Order to Limit the Proposed Class*;
- B. **EXCLUDE** all non-residents of the Province of Quebec from the Proposed Class;
- C. **THE WHOLE**, costs to follow.

Montréal, October 26, 2020



Borden Ladner Gervais LLP

Lawyers for Defendants Samsung
Electronics Co., Ltd., Samsung
Semiconductor Inc., and Samsung
Electronics Canada Inc.

AFFIDAVIT

I, the undersigned, Karine Chênevert, practising my profession as a lawyer at Borden Ladner Gervais LLP, located at 1000 De La Gauchetière Street West, Suite 900, Montréal, Province of Québec, H3B 5H4, declare under oath that:

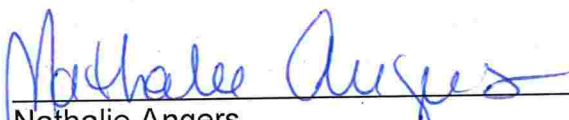
- (1) I am one of the lawyers for Defendants Samsung Electronics Co., Ltd., Samsung Semiconductor Inc., and Samsung Electronics Canada Inc. in the present case;
- (2) I have read the attached *De Bene Esse Application for Declinatory Exception in Order to Limit the Proposed Class e* and all the facts set forth are true.

AND I HAVE SIGNED in Montréal, QC, this October 26, 2020:



Karine Chênevert

DECLARED UNDER OATH REMOTELY by technological means before me at Montréal, Québec, this October 26, 2020.


Nathalie Angers
Commissioner of Oaths #137908
Commissioner for Oaths for Québec



NOTICE OF PRESENTATION

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and Micron Semiconductor Products, Inc.

AND: Mtre Nicholas Rodrigo
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Lawyers for Defendants SK Hynix, Inc.
and SK Hynix America, Inc.

TAKE NOTICE that the present *De Bene Esse Application by Defendants Samsung Electronics Co., Ltd., Samsung Semiconductor Inc., and Samsung Electronics Canada Inc., ("Samsung Defendants") For Declinatory Exception In Order To Limit The Proposed Class* will be presented for hearing and allowance at a time and a place to be determined by the Honourable Justice Donald Bisson of the Superior Court of Québec.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, October 26, 2020

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for Defendants Samsung
Electronics Co., Ltd., Samsung
Semiconductor Inc., and Samsung
Electronics Canada Inc.

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Objet: NOTIFICATION: De Bene Esse Application by Defendants Samsung for Declaratory Exception in Order to Limit the Proposed Class / Gay Hazan vs. Micron Technology inc. et al. (500-06-000923-181)
Pièces jointes: De Bene Application by Defendants Samsung for Declaratory Exception...PDF

Suivi:

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Remis: 2020-10-26 15:20

Saint-Onge, Jean

Remis: 2020-10-26 15:20

NOTIFICATION BY ELECTRONIC COURIER TRANSMISSION SLIP (ARTICLE 134 C.P.C.)

DATE:

Montréal, October 26 2020

SENDER:

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Your file:

COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

File number: 500-06-000923-181
Parties: Gay Hazan vs. Micron Technology inc. et al.
Nature: *DE BENE ESSE* APPLICATION BY THE DEFENDANTS SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR INC., AND SAMSUNG ELECTRONICS CANADA INC. FOR DECLINATORY EXCEPTION IN ORDER TO LIMIT THE PROPOSED CLASS

Number of pages: -8-
(attachments only)



Nathalie Angers

Adjointe à la pratique de / Practice Assistant for: Karine Chênevert, Ève Gaudet, Gabrielle Tremblay & Jasmine Kavadias Landry

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SUPERIOR COURT

Class action
District of Montreal
File No.: 500-06-000923-181

GAY HAZAN,

Petitioner

vs.

MICRON TECHNOLOGY INC.,

-and-

MICRON SEMICONDUCTOR PRODUCT INC.,

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SEMICONDUCTOR INC.),

-and-

SK HYNIX AMERICA, INC. (formerly known as HYNIX
SEMICONDUCTOR INC.)

Respondents

DE BENE ESSE APPLICATION BY THE
DEFENDANTS SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG SEMICONDUCTOR INC., AND SAMSUNG
ELECTRONICS CANADA INC. FOR DECLINATORY
EXCEPTION IN ORDER TO LIMIT THE PROPOSED
CLASS
(Articles 167 and 576 CCP, and Article 3148 CCQ)

ORIGINAL

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