

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

NO: 500-06-001101-209

ALAIN HAYON

Applicant

-vs-

RECOCHEM INC.

Defendant

APPLICATION TO TEMPORARILY STAY THE CLASS ACTION
(arts. 18, 49, 577 C.C.P. & art. 3137 C.C.Q.)

TO THE HONOURABLE CHANTAL CHATELAIN, J.S.C., COORDINATING JUDGE
OF THE CLASS ACTION DIVISION, YOUR APPLICANT STATES AS FOLLOWS:

I. **INTRODUCTION**

1. The Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* was filed on November 13, 2020 (the "**Quebec Action**") on behalf of the following class:

Class:

All legal and natural persons who, from or before 2000 until present, purchased Paint Thinners, Varsol or Mineral Spirits produced by Recochem.

2. Two other class actions were filed prior to the Quebec Action in Ontario and British Columbia, respectively, as more fully detailed below;
3. For the reasons that follow, the Applicant respectfully requests a temporary stay of the Quebec Action;

II. **LIS PENDENS**

4. On September 30, 2020, William Elliott (represented by the law firm of Cambridge LLP) filed a Statement of Claim before the Superior Court of Justice of Ontario under the *Class Proceedings Act, 1992*, in Court docket number CV-20-00648561-00CP, against Recochem Inc. and others (the "**Ontario Action**"),

on behalf of the following class, as it appears from paragraph 10 of a copy of the Statement of Claim communicated herewith as **Exhibit S-1**:

Class:

“Plaintiff and all persons or corporations who from or before 2000 until present, purchased Paint Thinner, Mineral Spirits, and Varsol.”

5. On November 12, 2020, Maciej Siwocha (represented by the law firm of Boughton Law Corporation) filed a Notice of Civil Claim before the Supreme Court of British Columbia under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, in Court file number VLC-S-S-2012015, against Recochem Inc. (the “**B.C. Action**”), as it appears from a copy of the Notice of Civil Claim communicated herewith as **Exhibit S-2**. The class that Mr. Siwocha seeks to represent is described at paragraph 3 of his claim as follows:

“Plaintiff and all persons or corporations who from or before 2000 until present, purchased Paint Thinners, Varsol or Mineral Spirits produced by Recochem.”

6. The undersigned class counsel for the Quebec Action are collaborating with counsel from the Ontario Action and with counsel for the B.C. Action in prosecuting the class action nationally;
7. Indeed, the Quebec Action, Ontario Action and the B.C. Action raise substantially the same legal and factual issues and include the same members;
8. The parties seek to avoid the possibility of contradictory judgments and to ensure a sound and efficient use of judicial resources, all the while protecting the interests of the putative class members who are Quebec residents as required pursuant to article 577 C.C.P.;
9. The Applicant therefore seeks a stay of the Quebec Action pending a final judgment on the putative class action in the B.C. Action, or earlier as may be further requested by the Applicant or ordered by the Court;
10. Counsel for the Ontario Action will make the same request to the Superior Court of Justice of Ontario;
11. For the reasons detailed below, the Applicant submits that it is in the interests of justice and consistent with the principles of proportionality and judicial economy that the overlapping issues raised in the Quebec Action, the Ontario Action and the B.C. Action be adjudicated by a single court, which the parties propose to be the Supreme Court of British Columbia (the Defendant does not oppose this request);
12. The parties submit that there is *lis pendens* between the Quebec Action and the

B.C. Action, as there is identity of parties, cause and object;

13. There is identity of object as the Quebec Action and the B.C. Action seek to have a class action authorized/certified. Quebec's Court of Appeal has found that the object is the « *bénéfice juridique immédiat qu'il veut faire reconnaître par le tribunal* » (*Hotte c. Servier*, [1999] R.J.Q. 2598 (C.A.));
14. Both the Quebec Action and the B.C. Action are based on the same fundamental allegations of fact and assert the same causes of action, namely that all of the Solvent Products Recochem sold were identical, but that Recochem charged a premium for some and represented them as having a different chemical makeup and intended applications, thereby causing losses and damages to Canadian consumers who purchased its Solvent Products;
15. The causes of action asserted in the B.C. Action are virtually the same as the causes of action asserted in the Quebec Action. The B.C. Action specifically alleges Quebec law (see Exhibit S-2 at paras. 42-46);
16. In these circumstances, the rights of the putative class members in the Quebec Action will be asserted in a similar fashion in the B.C. Action;
17. Class counsel submits that by using a single proceeding, Quebec residents will benefit from judicial economy and their counsel will not expend time and costs simultaneously in more than one jurisdiction;
18. Additionally, Exhibit P-1 communicated in support of the Quebec Action lists Recochem's domicile as 2600-595 Burrard Street, Vancouver, British-Columbia V7X 1L3;
19. Class counsel in the Quebec Action will maintain the bilingual website created for this class action upon its original filing in November of 2020 (<https://lpclex.com/recochem/> and <https://lpclex.com/fr/recochem/>) in order to keep putative class members in the Quebec Action informed of all important developments in the B.C. Action;
20. Class counsel undertakes to provide this Court with an update on the status of the B.C. Action on a semi-annual basis, and to advise this Court within 30 days of any significant development in the B.C. Action that may affect the course of the Quebec Action;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present Application;
2. **STAY** the present action until a final judgment is rendered in the putative class action filed by Maciej Siwocha before the Supreme Court of British Columbia in Court file number VLC-S-S-2012015, or earlier as may be subsequently requested by the Applicant or ordered by the Court;

3. **TAKE ACT** of Class Counsel's undertaking to provide this Court with an update on the status of the B.C. Action on a semi-annual basis, and to advise this Court within 30 days of any significant development in the B.C. Action that may affect the course of the Quebec Action;
4. **THE WHOLE** without costs.

Montreal, December 23, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.
Me Joey Zukran
Counsel for Applicant

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(Class Actions)

NO: 500-06-001101-209

ALAIN HAYON

Applicant

-vs-

RECOCHEM INC.

Defendant

LIST OF EXHIBITS

- EXHIBIT S-1:** Copy of the September 30, 2020, Statement of Claim filed by William Elliott before the Superior Court of Justice of Ontario in Court docket number CV-20-00648561-00CP;
- EXHIBIT S-2:** Copy of the November 12, 2020, Notice of Civil Claim filed by Maciej Siwocha before the Supreme Court of British Columbia in Court file number VLC-S-S-2012015.

Montreal, December 23, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.
Me Joey Zukran
Counsel for Applicant

500-06-001101-209

**(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL**

ALAIN HAYON

Applicant

v.

RECOCHEM INC.

Defendant

APPLICATION TO TEMPORARILY STAY THE CLASS ACTION
(ARTS. 18, 49, 577 C.C.P. & ART. 3137 C.C.Q.)

ORIGINAL

Me Joey Zukran
LPC AVOCAT INC.
276, rue Saint-Jacques, suite 801
Montréal, Québec, H2Y 1N3
Téléphone: (514) 379-1572 • Télécopieur: (514) 221-4441
Email: jzukran@lpclex.com

BL 6059

N/D : JZ-220
