

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Locality of Montreal

N°: 500-06-001014-196

(Class Action Division)
SUPERIOR COURT

JOSIANE FRÉCHETTE

Plaintiff

v.

NHK SPRING CO., LTD. *et al.*

Defendants

**APPLICATION BY THE DEFENDANTS FOR A STAY OF THE
APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION**

(Articles 18 and 577 of the *Code of Civil Procedure*
and Article 3137 of the *Civil Code of Quebec*)

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I. INTRODUCTION

1. By way of her *Application for Authorization to Institute a Class Action* (the “**Quebec Action**”), the Plaintiff is contending that the Defendants have engaged in anticompetitive conduct and purportedly infringed competition laws in relation to suspension assemblies for hard disk drives (“**Suspension Assemblies**”);
2. By way of this application, the Defendants jointly seek a stay of the Quebec Action on the following grounds:
 - a) The Quebec Action is *lis pendens* with the Ontario Action (as defined below), which involves the same parties, causes and objects, and which was filed first in that jurisdiction. The Ontario Action is likely to result in a decision which may be recognized in Quebec;
 - b) The guiding principles of procedure require avoiding unnecessary duplication of the Court and the parties’ resources, particularly given that the Ontario Action is intended to be prosecuted in a coordinated fashion with the Quebec Action by a “consortium” of attorneys nationwide, including Counsel for the Plaintiff;
 - c) The stay of the Quebec Action will not be detrimental to the interests of the members of the Quebec Action as, *inter alia*, the Quebec Action claims are subsumed in the Ontario Action;

II. THE PENDING CLASS ACTION AND THE PLAINTIFFS’ CONSORTIUM

A. The Ontario Action

3. On **July 30, 2019**, the Plaintiffs Emily Copeland and Andrija Majstorovic, being represented by Foreman & Company, filed before the Ontario Superior Court of Justice a Statement of Claim brought under the *Class Proceedings Act, 1992*, against the very same Defendants that are named in the Quebec Action alleging anticompetitive conduct in relation to Suspension Assemblies on behalf of the following proposed class:

All persons and entities in Canada who purchased HDD Suspension Assemblies or products which contained HDD Suspension Assemblies during the Class Period (the period commencing May 1, 2008 and continuing up to the present)

as appears from the Statement of Claim dated July 30, 2019, before the Ontario Superior Court of Justice, Court File No. 1517/19 (the “**Ontario Action**”), **Exhibit R-1**;

4. The Ontario Action is seeking the certification of a class action purporting to, *inter alia*, condemn the Defendants to pay general damages to compensate the Plaintiffs and the class members for the overcharge as a result of the Defendants’ purportedly unlawful conduct, as well as punitive damages;

B. The Quebec Action

5. On **July 31, 2019**, the Quebec Action was filed by the Plaintiff, being represented by Belleau Lapointe LLP, on behalf of the following proposed class:

Any person who, between May 1, 2008 and April 30, 2016, purchased in Quebec one or more Suspension Assemblies or one or more products equipped with Suspension Assemblies

as appears from the court record.

6. The Quebec Action also seeks the authorization to institute a class action purporting to, *inter alia*, condemn the Defendants to pay damages to compensate the overcharge generated by the alleged artificially inflated portion of the sales prices of Suspension Assemblies and/or products equipped with one or more Suspension Assemblies purchased in Quebec, as appears from the court record;

C. The British Columbia Action

7. On **September 23, 2019**, the Plaintiff Tony Cheung, being represented by Camp Fiorante Matthews Mogeran LLP, filed before the Supreme Court of British Columbia a Notice of Civil Claim brought under the *Class Proceedings Act* against the same Defendants that are named in the Quebec Action and others alleging anticompetitive conduct in relation to Suspension Assemblies on behalf of the following proposed class:

All persons and entities in British Columbia who purchased HDD Suspension Assemblies, or products which contained HDD Suspension Assemblies, during the Class Period (the period commencing May 1, 2008 and continuing up to the present)

as appears from the Notice of Civil Claim dated September 23, 2019, before the Supreme Court of British Columbia, Court File No. S1919612 (the "**BC Action**"), **Exhibit R-2**;

8. The BC Action seeks the certification of a class action purporting to, *inter alia*, condemn the Defendants to pay general damages corresponding to the class members' loss by virtue of having paid higher prices for Suspension Assemblies than what would have been paid in the absence of the purportedly illegal conduct of the Defendants;
9. It is the understanding of the Defendants that the BC Action would be informally stayed to the benefit of the Ontario Action;

D. Other Class Actions

10. On **August 15, 2019**, the Plaintiff Stéphane Landry, represented by Siskinds, Desmeules, Avocats S.E.N.C.R.L., filed a *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentant* before the Superior Court of Quebec, District of Quebec, court file number 200-06-000233-190, on behalf of all persons in Quebec who purchased one or more Suspension Assemblies and/or products equipped with Suspension Assemblies between May 1, 2008 and April 30, 2016 (the "**Landry Action**"), as appears from the *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentant* dated August 15, 2019, bearing court file 200-06-000233-190, **Exhibit R-3**;
11. On **August 23, 2019**, the Plaintiff Dalton Laino, represented by Siskinds LLP, filed a Statement of Claim before the Ontario Superior Court of Justice, under the *Class Proceedings Act, 1992*, on behalf of a proposed class consisting of all persons in Canada who purchased Suspension Assemblies and/or products containing Suspension Assemblies between May 1, 2008 until at least April 30, 2016 (the "**Laino Action**"), as appears from the Statement of Claim dated August 23, 2019, before the Superior Court of Justice for Ontario, Court File CV-19-00001673-00CP, **Exhibit R-4**;
12. The Landry Action has not been served on the Defendants and Counsel for the Plaintiff disclosed in a letter to the court dated December 15, 2020, that a suspension of the Landry Action was agreed to with the Plaintiff in that case;
13. The Laino Action has not been served on the Defendants;

E. The Plaintiffs' "Consortium"

14. It is the understanding of the Defendants that Belleau Lapointe LLP, Foreman & Company and Camp Fiorante Matthews Mogergerman LLP have created a "Consortium" for the filing and the prosecution of the Suspension Assemblies litigation in Canada and are actively collaborating together with Siskinds in a coordinated fashion on behalf of all the persons and entities they purport to represent;
15. Indeed, in a letter to the court dated December 15, 2020, Belleau Lapointe LLP indicated that all the above actions were progressing nationwide in a coordinated fashion;

F. The Status of the Actions

16. While all of the above actions are at their initial stages and no material steps have been taken in most of the actions, the Plaintiffs in the Ontario Action have filed a Motion on January 5, 2021 to, *inter alia*, add NHK Spring (Thailand) Co., Ltd. and Magnecomp Corporation as Defendants¹;

¹ The proposed Amended Statement of Claim in the Ontario Action, which now lists Siskinds LLP as co-counsel for the Plaintiffs, is enclosed as **Exhibit R-5**.

III. **THE STAY OF THE QUEBEC ACTION**

17. The Quebec Action ought to be stayed for the following reasons:

A. International *Lis Pendens*

18. The Quebec Action is *lis pendens* with the Ontario Action, which was filed first before the Ontario Superior Court of Justice, and can result in a decision which may be recognized in Quebec.

19. Indeed, the Quebec Action and the Ontario Action are brought between the same parties, are based on the same facts and raise the same causes and objects:

- a) Parties: The Defendants to both the Quebec Action and the Ontario Action are the same and, should the Motion to Add Defendants be granted, the Defendants in the Ontario Action would include more Defendants than in the Quebec Action, and the proposed class of the Ontario Action encompasses all the purported class members of the Quebec Action;
- b) Facts: Both the Quebec Action and the Ontario Action allege the same set of facts and circumstances pertaining to the same allegedly anticompetitive conduct of the Defendants in relation to Suspension Assemblies and rely on an identical backdrop and refer to the same various investigations conducted in support of their allegations;
- c) Cause: Both the Quebec Action and the Ontario Action primarily rely on alleged violations of the *Competition Act*², which is a federal statute that should have a uniform application throughout Canada, and invoke analogous breaches of legal duties and ground of negligence under common law and civil law;
- d) Object: Both the Quebec Action and the Ontario Action seek the authorization and certification of a class action for identical or analogous purposes, based on identical or analogous proposed common issues for identical or analogous conclusions sought;

20. As a result, the judgment to be rendered at the outcome of the Ontario Action is likely to be binding on the proposed class members to the Quebec Action and may exhaust their claims;

B. The Court's Inherent Powers to Stay the Quebec Action

21. In addition to the above, the court has the inherent power to properly case manage its docket in an efficient and proportionate fashion, which powers ought to be used in the case at bar:

- a) It is contrary to the interests of the judicial system, the interests of the Defendants and the interest of the class members that the scarce judicial resources and the resources of the parties be deployed to litigate a duplicative class action in the Quebec Action in presence of the Ontario Action, especially as Counsel for the Plaintiff – Belleau Lapointe LLP – is involved in the “Consortium” for the prosecution of the Ontario Action;

² R.S.C. (1985), c. C-34.

- b) The conclusions in the Ontario Action with regard to law applicable to the dispute as well as the analysis in relation to the alleged causes of action may bear upon the Quebec Action, or may influence or direct its conduct;
 - c) The simultaneous prosecution of overlapping class actions in different jurisdictions, one encompassing the class members of the other, creates a risk of conflicting or contradictory judgments;
 - d) The simultaneous prosecution of overlapping class actions in different jurisdictions may create confusion or the dissemination of inconsistent or duplicative information to the class members;
22. As a result, and considering the specific genesis and circumstances of this case, the stay of the Quebec Action is consistent with an efficient and proportionate case management of the court's docket;

C. The Interests of the members of the Quebec Action are not jeopardized by its stay

23. The Defendants respectfully submit that the stay of the Quebec Action is in accordance with the interests of justice, while not being detrimental to the interests of the members of the Quebec Action, whose rights, if any, are not jeopardized:
- a) The claims of the members of the Quebec Action are completely subsumed in the claims alleged in the Ontario Action and will be asserted in that proceeding by the "Consortium" (which includes Counsel for the Plaintiff – Belleau Lapointe LLP);
 - b) The members of the Quebec Action benefit from the suspension of prescription as per Article 2908 of the *Civil Code of Quebec*;
24. Also, the stay of the Quebec Action could be lifted at any time in the future, if the circumstances so warrant;

IV. CONCLUSION

25. In light of the foregoing, the Quebec Action ought to be stayed until a final judgment has been rendered at the outcome of the Ontario Action;
26. In the alternative, the Quebec Action ought to be stayed until a judgment has been rendered with regard to the certification of the Ontario Action;
27. The Defendants undertake to periodically inform the court of the status of the Ontario Action and of the procedural steps that have been taken to move the litigation toward;
28. The foregoing is submitted for the purpose of this application only and is without prejudice to any grounds the Defendants may invoke with regard to the lack of the jurisdiction of the Superior Court or any other Canadian Court.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this Application by the Defendants to Stay the Quebec Action;

STAY any and all proceedings related to the *Application for Authorization to Institute a Class Action* until a final judgment has been rendered in the matter before the Superior Court of Justice for Ontario in the Court File No. 1517/19;

IN THE ALTERNATIVE, STAY any and all proceedings related to the *Application for Authorization to Institute a Class Action* until a certification judgment has been rendered in the matter before the Ontario Superior Court of Justice in the Court File No. 1517/19;

ACKNOWLEDGE the undertakings by the Defendants to provide the Court with periodic status reports no more than six months apart regarding the Ontario Action;

WITHOUT COSTS.

Montreal, January 15, 2021



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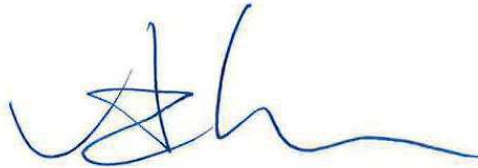
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AFFIDAVIT

I, the undersigned, Vincent de l'Étoile, practicing my profession at Langlois Lawyers LLP, 1250 René-Lévesque Blvd. West, 20th Floor, Montreal, Quebec, H3B 4W8, having been duly sworn, do depose and solemnly declare that:

1. I am one of the attorneys representing the Defendants NHK SPRING CO. LTD., NHK INTERNATIONAL CORPORATION AND NAT PERIPHERAL (HONG KONG) CO., LTD. in the present matter;
2. I verily believe that the facts alleged in this application to which this affidavit is attached that do not appear from the court record, if any, are true.

AND I HAVE SIGNED



VINCENT DE L'ÉTOILE

SOLEMNLY DECLARED before me
by videoconference, this 15th day of January 2021



Commissioner for oaths for the Province of Quebec

NOTICE OF PRESENTATION

TO: Mr. Maxime Nasr / Mr. Jean-Philippe Lincourt
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TAKE NOTICE that the *Application by the Defendants for a stay of the Application for Authorization to Institute a Class Action* will be presented for adjudication before this Honourable Court, on a date, time and place to be determined by the case management judge to be appointed in this instance, at the Montreal Courthouse located at 1, Notre-Dame Street East, Montreal (Quebec) H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, January 15, 2021



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SUPERIOR COURT (Class Action Division)
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JOSIANE FRÉCHETTE

Plaintiff

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Defendants

**APPLICATION BY THE DEFENDANTS FOR A
STAY OF THE APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION, LIST OF EXHIBITS AND
EXHIBITS R-1 TO R-5**

(Articles 18 and 577 of the *Code of Civil Procedure*
and Article 3137 of the *Civil Code of Quebec*)

ORIGINAL



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