CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

C.A.: 500-09-
S.C.M: 500-06-000923-181

COURT OF APPEAL

GAY HAZAN,

APPELLANT - Plaintiff

v.

MICRON TECHNOLOGY, INC., a legal person constituted according to the law, having its head office at 8000 South Federal Way, in the City of Boise, in the State of Idaho, 83716, U.S.A.;

-and-

MICRON SEMICONDUCTOR PRODUCTS, INC., a legal person constituted according to the law, having its head office at 8000 South Federal Way, in the City of Boise, in the State of Idaho, 83716, U.S.A.;

-and-

SAMSUNG ELECTRONICS CO LTD., a legal person constituted according to the law, having its head office at 129, Samsung-ro, Yeongtong, in the City of Suwon, Province of Gyeonggi, Republic of Korea;

-and-

SAMSUNG SEMICONDUCTOR, INC., a legal person constituted according to the law, having its head office at 3655 North First Street, in the City of San Jose, in the State of California, 95134, U.S.A.;

-and-

SAMSUNG ELECTRONICS CANADA INC., a legal person constituted according to the law, having its head office at 2050 Derry Road West, in the City of Mississauga, Province of Ontario, L5N 0B9, and having its elected domicile at 1 Place-Ville-Marie, Suite 3900, in the City and District of Montreal, Province of Quebec, H3B 3P4;

-and-

SK HYNIX, INC. (formerly known as HYNIX SEMICONDUCTOR, INC.), a legal person constituted according to the law, having its head office at 2091 Gyeongchung-daero, Bubal-eup in the City of Incheon, Province of Gyeonggi, Republic of Korea;

-and-

SK HYNIX AMERICA, INC. (formerly known as HYNIX SEMICONDUCTOR AMERICA, INC.), a legal person constituted according to the law, having its head office at 3101 North First Street, in the City of San Jose, in the State of California, 95134, U.S.A.;

RESPONDENTS – Defendants

NOTICE OF APPEAL
(Article 352 C.C.P.)
Appellant
Dated July 29, 2021

I. INTRODUCTION

1. The Appellant-Plaintiff inscribes the present matter in appeal before the Court of Appeal, sitting in Montreal.
2. The Appellant appeals from the judgment rendered on June 28, 2021, by the Honourable Judge Donald Bisson (hereinafter the "**Judge**"), of the Superior Court, sitting in the judicial district of Montreal (Schedule 1), hereinafter the "**Judgment**".
3. The date of the notice of judgment is July 5, 2021.
4. The Judgment dismissed with costs the Applicant's Amended Application for Authorization to Institute a Class Action dated April 14, 2021, a copy of which, together with its Exhibits (Schedule 2, *en liasse)* hereinafter the "**Application for Authorization**".
5. The first instance hearing lasted two days and took place on May 5 and 6, 2021.
6. In the present class action proceeding, the Appellant seeks the authorization to institute a class action against Respondents resulting from their alleged price-fixing

conspiracy in restricting the production of dynamic random-access memory ("**DRAM**") chips from June 1, 2016, to February 1, 2018 (the "**Class Period**").

7. Indeed, Appellant intends to institute a class action on behalf of the following Class:

   All persons or entities in Canada (subsidiarily in Quebec) who, between at least June 1, 2016 and February 1, 2018, acquired 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;

8. A parallel class action proceeding is pending before the Federal Court of Canada in the file *Jensen v. Samsung Electronics Co., Ltd.* (Federal Court number T-809-16) ("***Jensen***"). The certification hearing in that case was held from October 26, 2020 to October 28, 2020, and the decision is still under advisement.

9. As appears from the Court records, the Honorable Justice Bisson refused to suspend the present Quebec case in favor of the *Jensen* case (*Hazan c. Micron Technology Inc. et al.*, 2019 QCCS 387), and this Honorable Court confirmed that first instance decision in *Micron Technology Inc. et al. c. Hazan*, 2020 QCCA 1104.

10. On March 15, 2021, the Superior Court permitted in part Appellant–Plaintiff's application for permission to amend the Application for Authorization (*Hazan c. Micron Technology Inc. et al.*, 2021 QCCS 847, Schedule 3).

11. Pursuant to Article 108 C.C.P., we submit that the record contains confidential information, namely Exhibit R-13, which consists of the online submissions made by putative class members on the undersigned attorneys' firm website. These online submissions contain the class members' personal information, which Appellant intended to file under seal and which Appellant wishes to keep confidential in the context of the present appeal proceedings.

II. GROUNDS OF APPEAL

a) **The Judge committed a palpable and overriding error in law when he concluded that the threshold to demonstrate a fault pursuant to Sections 36 and 45 of the *Competition Act* and pursuant to Article 1457 C.C.Q. have the same criteria and**

that the Appellant was required to prove a price-fixing agreement at the authorization stage.

12. We respectfully submit that the Judge erred in law at paragraphs 27 and 28 of the Judgment when determining that the Plaintiff's burden of proof at the authorization stage of a class action pursuant to Article 1457 C.C.Q. is the <u>same</u> as pursuant to Sections 36 and 45 of the *Competition Act,* specifically that the Plaintiff had to prove that the Respondents/Defendants had an agreement which led to a price-fixing cartel.

13. On this issue, the Appellant intends to demonstrate that the Judge erroneously interpreted *Infineon Technologies AG c. Options Consommateurs*, 2013 SCC 59, paragraphs 80 to 100. In *Infineon*, the Supreme Court of Canada confirms (1) that the burden of proof under the *Competition Act* is more onerous than the burden of proof under extracontractual liability cases pursuant to Article 1457 C.C.Q, and (2) that the Plaintiff's burden at the authorization stage is not to prove that Respondents had an agreement to collude to price fix, but to merely demonstrate an arguable case that the allegations of facts in the Application for Authorization and the exhibits filed demonstrate *prima facie* that it is possible, under the circumstances that the Respondents had indeed colluded during the Class Period and that class members suffered damages as a result of such collusion.

14. Surprisingly, at page 15 of the Judgment, the Judge cites his own decision in *Option Consommateurs* c. *Nippon Yusen Kabushiki Kaisha,* in which he confirmed that: « La responsabilité civile pour complot ou cartel peut être établie en vertu de l'article 1457 CcQ, même en l'absence de preuve de transgression d'une obligation spécifique prévue à la Loi sur la concurrence »[1];

15. In *Option Consommateurs c. Minebea Co. Ltd.*[2], the Superior Court of Quebec stated the following at the authorization stage of a price-fixing class action:

> [62] L'existence du cartel est au cœur de l'ensemble des réclamations des membres du groupe. Tous les membres, sans égard à leur situation personnelle, possèdent en commun l'intérêt de prouver l'existence d'un complot et de maximiser leur perte résultant de la surfacturation illégale, liée audit complot.

---

[1] 2019 QCCS 1155, par. 44(2) ;

[2] 2016 QCCS 3698

16. Accordingly, in *Minebea*, the first and second authorized conclusion to be dealt with at the merits stage was whether a cartel existed at all and whether the participation in such a cartel constituted a fault:

> **IDENTIFIE** comme suit les principales questions de faits et de droit qui seront traitées collectivement :
>
> 1. Les défenderesses ont-elles comploté, se sont-elles coalisées ou ont-elles conclu un accord ou un arrangement ayant pour effet de restreindre indûment la concurrence dans la vente des roulements à billes de petite taille et, dans l'affirmative, durant quelle période ce cartel a-t-il produit ses effets sur les membres du groupe?
> 2. La participation des défenderesses au cartel constitue-t-elle une faute engageant leur responsabilité solidaire envers les membres du groupe?

17. Similarly, in *Roy c. JTEKT Corporation*[3], at paragraphs 33, 43, 44 and 103, and at footnote 15, the Superior Court of Quebec referred to the above-cited paragraph 62 in *Minebea*, clearly stating that the very existence of a cartel is a common question to be determined at the merits stage of the Class Action and that asking the Plaintiff to prove secret agreements and/or secret conversations at the authorization stage would be "*utopique*", and therefore is not the burden to be fulfilled (the Court adding that the Plaintiff should benefit from presumptions in this regard at the authorization stage):

> [33] À l'évidence, ce qui est reproché est un complot international auquel auraient participé les défenderesses. Le simple débat en regard de ce complot [Footnote 15 - citing *Minebea*] démontre qu'il existe du moins cette question commune qui fera évoluer les réclamations de chacun des membres du groupe.
>
> [...]
>
> [43] Il n'est pas évident de faire la preuve d'une contravention aux règles de la concurrence même pour une autorité comme le Département américain de la justice ou le Bureau canadien de la concurrence, et encore moins pour le demandeur. Par sa nature, le présent recours fondé sur les règles de concurrence doit démontrer des ententes secrètes, des conversations privées de grands patrons d'entreprises européennes ou japonaises ou de leurs filiales, spécialistes en fabrication de pièces automobiles, à l'abri des regards furtifs et oreilles indiscrètes.
>
> [44] Il serait donc utopique de croire que, dès le stade de l'autorisation, le demandeur puisse faire des démonstrations convaincantes sans bénéficier d'une certaine façon des règles de présomption.
>
> [...]

[3] 2020 QCCS 2239

[103] **IDENTIFIE** les principales questions de faits et de droit à être traitées collectivement comme étant les suivantes :

• Les Défenderesses et leurs co-conspirateurs ont-ils comploté, se sont-elles coalisées ou ont-elles conclu un accord ou un arrangement ayant pour effet de restreindre indûment la concurrence dans la vente des Roulements et/ou d'augmenter déraisonnablement les prix des Roulements et, dans l'affirmative, durant quelle période ce cartel (complot et truquage d'offres) a-t-il produit ses effets sur les membres du Groupe?

• La participation des Défenderesses et leurs co-conspirateurs au cartel (complot et truquage d'offres) constitue-t-elle une faute engageant leur responsabilité solidaire envers les membres du Groupe?

18. We therefore respectfully submit that requiring the evidence of a cartel/agreement at the authorization stage of a class action is an error in law which should be overturned by this Honorable Court since it imposes a much higher burden of proof on the Plaintiff instead of the simple *prima facia* burden to demonstrate an arguable case. Therefore, the Judge erred in law, imposed a merits stage burden on the Appellant, and his decision should be set aside by this Honorable Court on this issue alone.

b) The Judge committed a palpable and overriding error in law and fact when concluding that the criteria of Article 575(2) C.C.P. was not fulfilled for lack of sufficient evidence, concerning all of Appellant's causes of action.

19. Appellant respectfully submits that the Application for Authorization is well founded in fact and in law, that it contained sufficient allegations of facts, and that it was supported by sufficient *prima facie* evidence for the class action to be authorized. In this regard, the allegations of fact contained in the Application for Authorization, including Appellant's exhibits, are deemed to be true at the authorization stage[4].

20. The Judge erred at paragraph 48 and following of the Judgment when he determined that the Appellant's allegations were not supported by sufficient evidence, namely as to the existence of the cartel, the significant and unjustified increase in the price of DRAM during the Class Period, and that the Class Members overpaid for DRAM and/or DRAM containing products.

---

[4] *L'Oratoire Saint-Joseph du Mont-Royal c. J.J.*, 2019 CSC 35, par. 42.

21. Furthermore, Appellant intends to demonstrate that the first instance Judge refused Appellant's request to file the copy of the expert report submitted by Dr. Hal J. Singer Ph.D. (Managing Director at Econ One Research and Adjunct Professor at Georgetown University in Washington D.C.) in the context of the parallel Federal Court of Canada proceedings in *Jensen* (the "**Singer Report**", Schedule 4). The Singer Report clearly details how the fact that a market is controlled by very few players is likely to favor collusion among them (as was alleged in the Application for Authorization and its exhibits, but which the Judge refused to consider at paragraph 58(3) of the Judgment).

22. The Schedule 3 judgment cites Appellant's proposed new allegations, namely paragraphs 92.2 to 92.10 in reference to the Singer Report, which allegations were rejected by the fist instance Judge. We respectfully submit that the Singer Report was relevant to the criteria of authorization.

23. In his report, Dr. Signer, identified elements in Respondents' conduct that point to collusion during the Class Period. More particularly, Dr. Signer inter alia determined that (see page 31 to page 43 of the R-12 Singer Report): (a) the observed price inflation cannot be rationalized as a response to increasing; (b) the observed price inflation cannot be rationalized as a response to rising costs for DRAM; (c) unilateral price inflation of the same magnitude over the same duration by any one of the Respondents likely would have been unprofitable; (d) structural indicators for collusive conduct are likely satisfied here; and (e) the industry is characterized by high barriers to entry and expansion;

24. Regarding Respondents' conduct toward the sudden rise of the DRAM price as a response to the rise of the DRAM demand during the Class Period, Dr. Signer concluded that this is an irrational conduct given the time period where the price inflation was maintained.

25. Dr. Signer also questioned if the rise of the price of silicon, which is a material fundamental for the construction of DRAM, could be an explanation to the rise of the price of DRAM. After determining how much the increase of the price of silicon would

increase the price of DRAM, Dr. Signer concluded that the rise of silicon price during the Class Period could not explain the drastic increase of the DRAM price;

26. Dr. Signer also identifies structural indicators that facilitates collusion in a given market and determined that they are likely satisfied by Respondents' conduct during the Class Period. Dr, Signer then detailed how and why the DRAM industry is an industry wherein collusion is likely to happen. Finally, Dr. Signer indicated that a plus factor to all the factors mentioned above is the fact that there are high economical barriers to enter the DRAM production market;

27. In the Schedule 3 judgment, the Judge refused to permit the proposed paragraphs 92.2 to 92.10 and refused to permit the filing of the R-12 Singer Report, stating *inter alia* the following:

> [25] (…) Avec égards, le fait qu'un expert ait pu conclure à de la collusion dans un autre dossier n'est pas un fait dont le Tribunal doit tenir compte ni un élément qui fait avancer la cause de la demande.

28. The Judge therefore clearly confirms that in the Singer Report, expert Dr. Singer had concluded that there likely was DRAM chip collusion in this particular case during the Class Period. In addition, his above comment also confirms the Judge's belief that the fact that an expert had concluded to the existence of the collusion in this case would not advance the Appellant's case. However, and as mentioned above, the Judge ultimately modified his stated belief at the authorization hearing and concluded in his Judgment that the Appellant had to "prove" the existence of the colluding agreement at this stage and that Appellant had failed to do so.

29. Similarly, and without limitation any of the above, the Judge committed multiple other errors when stating at paragraphs 58 (4), (6) and (9) of the Judgment that no evidence was filed, whereas sufficient allegations were contained in the Application for Authorization which were supported by Appellant's exhibits, all of which should have been deemed to be true and were sufficient at this the stage of the proceedings.

30. Furthermore, the Judge summarizes at par. 58(11) of the Judgment the extensive number of exhibits and allegations concerning an investigation by the antitrust authorities of China (namely the National Development and Reform Commission

hereinafter the "**NDRC**") regarding the abnormal fluctuation of the DRAM prices, the fact that the Chinese authorities met with Respondents Samsung and Micron, the fact that Samsung signed a Memorandum of Understanding with the NDRC and the fact that it was reported by the NDRC that the investigation revealed massive evidence of collusion.

31. These errors are overriding errors because the Judge claimed that the allegations of the Application for Authorization lacked supporting evidence (which is denied). The Judge failed to properly link the exhibits already filed to the existing allegations in the Application for Authorization. In addition, the Judge refused Appellant's attempt to amend in order to add in the proposed paragraphs 92.2 to 92.10 when rejecting in part Appellant's *Application for Permission to Amend the Application for Authorization to Institute a Class action* dated February 5, 2021.

32. The Judge then proceeded to reject Appellant's verbal application for permission to file additional evidence (namely the Singer Report) at the authorization hearing of May 6, 2021[5]. The Judge in fact stated at the hearing that even if Appellant had chosen to file an expert report of his own in the context of these Quebec authorization proceedings, the Judge would not have read said report.

33. In this regard, we refer to *Lambert (Gestion Peggy) c. Écolait ltée*, 2016 QCCA 659, wherein this Honorable Court determined that Plaintiffs in class actions are permitted to file the exhibits they wish to rely upon at the authorization stage, without having to seek the permission of the Superior Court:

> [31] Il est utile de rappeler qu'une personne qui requiert l'autorisation d'exercer une action collective peut produire, au soutien de sa requête, les pièces qu'elle estime appropriées pour satisfaire son fardeau de démonstration, sans avoir à obtenir la permission pour ce faire.
>
> [32] L'ancien article 1002 C.p.c., in fine (C-25), devenu 574 C.p.c. in fine (C-25.01), n'a jamais eu pour effet d'obliger un requérant à demander la permission pour déposer des pièces au soutien de sa requête pour autorisation. D'ailleurs, le juge de l'autorisation doit non seulement tenir pour avérées les allégations de la requête, mais il doit aussi prendre en considération les pièces déposées à son soutien. Ce n'est que de façon très exceptionnelle qu'il pourra ordonner le retrait de pièces déposées par un requérant et uniquement parce qu'elles ne seraient pas pertinentes à l'examen des quatre critères d'autorisation ou alourdiraient indument un dossier. Les pièces visant à soutenir les allégations de la requête sont

[5] See footnote 5 of the Judgment.

> pertinentes et contribuent généralement à leur donner du poids, permettant ainsi au requérant de convaincre le juge de l'autorisation qu'il a satisfait son fardeau de démonstration[6].

34. It also trite law that the criteria of relevance before the authorization of a class action should be construed broadly. As Professor Catherine Piché states in *La preuve civile*[7]:

> **218** – *Procédures préalables* – La discrétion du tribunal d'exclure une preuve pour des motifs d'absence de pertinence est plus difficile à exercer au stade préliminaire de la procédure. Aussi, la notion de pertinence doit être appliquée avec plus de prudence et de souplesse lors des procédures antérieures à l'enquête. À ce stade, le tribunal doit favoriser la divulgation la plus complète possible de la preuve. En cas de doute, il doit faire confiance à la partie qui fait une allégation et qui désire présenter un élément de preuve et laisser au juge saisi du fond du litige le soin d'évaluer la pertinence des faits invoqués. [...]
>
> Le juge qui est saisi d'une demande de radiation d'allégations non pertinentes ou qui doit se prononcer avant l'enquête sur une objection fondée sur la non-pertinence d'une preuve n'est pas dans une aussi bonne position pour apprécier l'importance d'une preuve que celui qui l'analyse après l'enquête. Aussi, il doit être plus réticent à rejeter prématurément une preuve et le faire uniquement dans les cas évidents. <u>Cette affirmation est d'autant plus vraie dans le domaine des actions collectives, et de la demande pour permission d'exercer l'action collective, qui demeure une procédure préliminaire à l'exercice de l'action</u>. [...]
>
> (Emphasis added)

35. We respectfully submit and maintain that the Application for Authorization contained sufficient allegations and exhibits which are deemed to be true, and which support the authorization of the class action. Subsidiarily, the Judge refused Appellant's attempt to file the Singer Report and then ultimately refused to authorize the class action concluding to a lack of evidence regarding the very factual elements which were effectively proven and established (or at the very least demonstrated *prima facie*) in the Singer Report.

36. Similarly, and as mentioned above, the Singer Report confirms *inter alia* that there was a drastic increase in the price of DRAM during the Class Period and that this price increase could not be justified by any other relevant market factors, including the costs

---

[6] See also *Baulne c. Bélanger*, 2015 QCCS 5750, par. 12.

[7] Piché, C. *Notions générales,* La preuve civile, J.-C. Royer, 5e ed., 2016 EYB2016PRC19, par. 218, 219; See also the decisions cited by Me Piché at footnote 68 : *Baulne c. Bélanger, 2015*, QCCS 5750; *Cohen c. LG Chem Ltd.*, 2014 QCCS 155; *Thouin c. Ultramar ltée*, 2014 QCCS 3946; *Mouvement d'éducation et de défense des actionnaires (MEDAC) c. Société financière Manuvie*, 2012 QCCS 3422 ; *Desmarteau c. Ontario Lottery and Gaming Corporation*, 2013 QCCA 2090.

of material (all of which is already alleged in the Application for Authorization and is supposed to be deemed to be true). However, the Judge states the following at paragraph 63(4) and footnote 24 of the Judgment:

> 63 (4) Il n'y a pas non plus de preuve pour soutenir l'allégation du demandeur au paragraphe 38 de la Demande modifiée [24] selon laquelle la réduction des prix de la DRAM par les défenderesses ne répondrait à aucune raison économique justifiée. Cette affirmation est de la nature de l'expertise et doit donc être sous-tendue par un élément de preuve.
>
> ---
>
> Footnote [24] « without any legitimate economic reason for those increases, such as increasing costs ». Voir aussi le paragraphe 92 de la Demande modifiée.

37. As mentioned, this Honorable Court has confirmed that Plaintiffs are allowed to file exhibits in support of their allegations without having to ask for permission[8]. Had this Court's decision in *Lambert (Gestion Peggy)* been properly followed, the Singer Report would have been in evidence in order to further support the authorization of the class action[9]. We note that had the Judge ultimately authorized the class action, the erroneous refusal to consider the Singer Report would have been moot and therefore would not have irremediably injured the Appellant and the Class at the authorization stage. Since he ultimately refused to authorize the Class, Appellant is justified to also appeal the Judge's refusal to permit the filing of the Singer Report.

38. At the very end of the first day of the authorization hearing on May 5, 2021, the undersigned attorneys had completed their arguments and the Respondents began theirs. The Respondents argued that all factual allegations of collusion, agreements, price increases, the lack of market or costs related justifications for said price increases, etc., which are contained in the Application for Authorization, are not facts which are deemed to be true.

39. Accordingly, at the very beginning of the second day of the authorization hearing on May 6, 2021, the undersigned attorneys made the verbal application to file the Singer

---

[8] *Lambert (Gestion Peggy) c. Écolait ltée*, 2016 QCCA 659, par. 31, 32.

[9] See also *Charles c. Boiron Canada inc.*, 2016 QCCA 1716 , par. 47 - 52; *Roy c. JTEKT Corporation*, 2020 QCCS 2239 , par. 79- 86 ; *Association pour la protection automobile* c. *Ultramar Ltée,* 2012 QCCS 4199, par. 28 - 31; *Union des consommateurs* c. *Magasins Best Buy ltée (Future Shop Entrepôt de l'électronique) (Best Buy),* 2015 QCCS 5168, par. 34.

Report in response to this position taken by the Respondents the evening before. The Judge refused this verbal application, as confirmed in footnote 5 of the Judgment.

40. We respectfully submit that this Honorable Court should overturn that decision and permit the filing of the Singer Report as Exhibit R-12, in further support of the Application for Authorization.

c) The Judge committed a palpable and overriding error in law when he analysed the evidence submitted as though it had been submitted at the merits stage.

41. At paragraphs 61 to 65 of the Judgment, the Judge erred when he analysed and weighed the evidence submitted before him in search of <u>proof</u> of *inter alia* a conspiracy (agreement), of the lack of economic justifications for the DRAM price increases, etc.

42. The Appellant intends to demonstrate that the Judge's analysis of the proof, namely at paragraphs 62 to 65 but also elsewhere in the Judgment, departs from the standard of analysis and arguable case burden and from the "the judge's role to filter out frivolous claims, and nothing more"[10] set by this Honorable Court and by the Supreme Court of Canada in relation to the authorization stage of class actions.

43. At paragraph 61, the Judge confirms that he has disregarded ("*le Tribunal doit les écarter*") certain of Appellant's allegations regarding collusion and, at paragraph 62, the Judge announces that he had studied the Appellant's evidence ("*Lorsque le Tribunal étudie les éléments de prevue deposes par le demandeur, il conclut…*"). The Judge then dives into the merits of the case and the probative value of each element of proof submitted, in details at paragraphs 63(1) to 63(16), wherein the Judge uses words like "*contredire*", "*étude détaillée*", "*insuffisant* (…) *pour conclure à une faute*". This clearly demonstrates that the Judge wrongfully went into the merits of the case;

44. Finally at paragraph 63(13), the Judge refers once again to "massive evidence" of collusion coming out of China and the Judge ends by admits that there might be suspicions ("*soupçons*") that the Respondents conspired but that it was not enough in his opinion to fulfill the *prima facie* arguable case burden. We respectfully submit that

---

[10] *Desjardins Financial Services Firm Inc. v. Asselin*, 2020 SCC 30, par. 27;

any doubt should have been interpreted by the Judge in favor of the Appellant as provided by the case law[11].

45. This Honorable Court and the Supreme Court of Canada have often confirmed that going into the merits of the case and/or weighing the proof at the authorization stage of the proceeding, represents an appealable overring and palpable error[12].

46. The Judge also erred in fact when stating that the parallel class proceedings before the United States District Court of California had been dismissed (see paragraph 63 (6) of the Judgment). The US class proceedings filed as Exhibits R-1A and R-5 are in fact still under appeal before the US Courts, the whole as was confirmed by the undersigned attorneys during the authorization hearing.

d) The Judge committed a palpable and overriding error when he concluded that the criteria of Article 575(4) C.C.P. was not fulfilled.

47. By concluding that the Appellant had not fulfilled the Article 575(2) C.C.P. criteria, the Judge then concluded at paragraphs 92 to 103 of the Judgment that the Appellant therefore did not have a personal cause of action, hence not fulfilling the fourth criteria of Article 575 C.C.P.

48. However, the Judge did confirm that the Appellant would have otherwise fully satisfied the remainder of the 575(4) C.C.P. criteria, based on the factual allegations at paragraph 118 of the Application for Authorization.

49. We therefore respectfully submit that this Honorable Court should determine that the criteria of Article 575(2) C.C.P. and by extension of Article 575(4) C.C.P. are fulfilled herein, and therefore overturn the Judgment.

III. CONCLUSIONS

50. The Appellant will ask the Court of Appeal to:

GRANT the appeal;

---

[11] *L'Oratoire Saint-Joseph du Mont-Royal c. J.J.*, 2019 CSC 35, par. 42;

[12] *Martel c. Kia Canada inc.*, 2015 QCCA 1033, par. 26 to 28 ; *Lévesque c. Vidéotron, s.e.n.c.*, 2015 QCCA 205 ; *Charles c. Boiron Canada inc.*, 2016 QCCA 1716, par. 38 to 52 ; *Asselin c. Desjardins Cabinet de services financiers inc.*, 2017 QCCA 1673, par. 114 to 117 (confirmed by the Supreme Court of Canada in *Desjardins Cabinet de services financiers inc.v. Asselin*, 2020 SCC 30).

SET ASIDE the first instance Judgment rendered on June 28, 2021;

DE BENE ESSE, GRANT Appellant permission to appeal the May 6, 2021, judgment rendered during the first instance hearing, preventing him to file the April 19, 2019, Dr. Hal. J. Singer report as Exhibit R-12 in support of the Amended Application for Authorization to Institute a Class Action.

DE BENE ESSE, GRANT Appellant permission to file the April 19, 2019, Dr. Hal. J. Singer report as Exhibit R-12 in support of the Amended Application for Authorization to Institute a Class Action.

GRANT the Amended Application for Authorization to Institute a Class Action, dated April 14, 2021, according to its conclusions;

RENDER the authorization judgment in lieu of the Superior Court.

THE WHOLE with legal costs in appeal and in first instance, including the costs related to preparation and publication of the notices to Class Members, the Court stamp, and all costs related to the international service and translations of the proceedings in accordance with the Hague Convention, both in first instance and in appeal.

In accordance with the Court of Appeal Clerk's decision of July 26, 2021, this Notice of Appeal has been served on Respondents and notified to their attorneys in first instance, namely to Me Sydney Elbaz and Me Simon Paransky for Micron Technology inc. and Micron Semiconductor Products Inc., to Me Karine Chênevert for Samsung Electronics Co. Ltd, Samsung Semiconductor Inc. and Samsung Electronics Canada Inc. and to Me Nick Rodrigo and Me Faiz Lalani for SK Hynix Inc. and SK Hynix America Inc. and to the Office of the Superior Court, District of Montreal.

MONTREAL, July 29, 2021

Lex Group Inc

Copie conforme / True Copy
(s) / (sgd.) Lex Group Inc.
Lex Group Inc.

Lex Group Inc.
Per: David Assor and Joanie Lévesque
Class Counsel / Attorneys for Plaintiff
4101 Sherbrooke St. West
Westmount, (Québec), H3Z 1A7
Telephone: 514.451.5500
Fax: 514.940.1605
Email: davidassor@lexgroup.ca
Email: jlevesque@lexgroup.ca

NO.: 500-09-
NO.: 500-06-000923-181

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTREAL

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, para. 2 C.C.P.).

GAY HAZAN

APPELLANT - Plaintiff

v.

MICRON TECHNOLOGY, INC.
-and-
MICRON SEMICONDUCTOR PRODUCTS, 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 AMERICA, INC.)

RESPONDENTS - Defendants

The parties shall notify their proceedings (including briefs and memoranda) to the appellant and to the other parties who have filed a representation statement by counsel (or a non-representation statement). (Article 25, para. 1 of the Civil Practice Regulation)

If a party fails to file a representation statement by counsel (or non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine. (Article 30 of the Civil Practice Regulation)

NOTICE OF APPEAL

Appellant
July 29, 2021

LEX GROUP
AVOCATS · ATTORNEYS
WWW.LEXGROUP.CA

David Assor and Joanie Lévesque
Lex Group Inc.
4101 Sherbrooke St. West
Westmount, (Québec), H3Z 1A7

T: 514.451.5500 ext. 321
F: 514.940.1605
@: davidassor@lexgroup.ca
@: jlevesque@lexgroup.ca

BL 5606