

CANADA / JUDGMENT

Godfrey v. Sony Corporation

2018 BCSC 924

COURT

Supreme Court of British Columbia

DECIDED

6 June 2018

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2018 BCSC 924 Godfrey v. Sony Corporation IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Godfrey v. Sony Corporation, 2018 BCSC 924 Date: 20180606 Docket: S106462 Registry:

Vancouver Between: Neil Godfrey Plaintiff And: Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony of Canada Ltd., Sony Electronics, Inc., NEC Corporation, NEC Canada Inc., Toshiba Corporation, Toshiba Samsung Storage Technology Corporation, Toshiba Samsung Storage Technology Korea Corporation, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi Ltd., LG Electronics, Inc., LG Electronics Canada, LG Electronics USA, Inc., TEAC Corporation, TEAC America, Inc., TEAC Canada, Ltd., Koninklijke Philips Electronics N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Quanta Storage, Inc., Quanta Storage America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., BenQ Corporation, BenQ America Corporation and BenQ Canada Corp., Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co. Ltd., and Pioneer Electronics of Canada Inc. Defendants Brought under the Class Proceedings Act, R.S.B.C 1996, c. 50 Before: The Honourable Mr. Justice D.M. Masuhara Ruling on Settlement Counsel for Plaintiff: R.M. Mogerman D.G.A. Jones Counsel for Defendants Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., and Samsung Electronics America, Inc. R. Spigelman Counsel for Defendants Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada Inc. S. Azzopardi Counsel for Defendants Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony of Canada Ltd., and Sony Electronics, Inc. R. Gifford Counsel for Defendants Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc. C. Sainsbury J. Cabott Counsel for Defendants Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc. V. Toppings Counsel for Defendant Hitachi Ltd. K. Wright T. Shikaze Counsel for Defendants BenQ Corporation, BenQ America Corporation, and BenQ Canada Corp. S.M. Fitterman Counsel for Defendants NEC Corporation and NEC Canada Inc. M. Jamal C. Gleason-Mercier Counsel for Defendants LG Electronics, Inc., LG Electronics Canada, and LG Electronics USA, Inc. S. Frankel Counsel for Defendants TEAC Corporation, TEAC America, Inc., and TEAC Canada, Ltd. K.A. Booth Counsel for Defendants Koninklijke

Philips Electronics N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., and Philips Electronics Ltd. N. Campbell S. Gordon J. Young Counsel for Defendants Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd., and Pioneer Electronics of Canada Inc. J. Lewis Place and Date Hearing: Vancouver, B.C. May 14, 2018 Place and Date of Ruling: Vancouver, B.C. June 6, 2018

Introduction

- [1] This Ruling deals with an application for approval of settlements reached with three defendants and an application for approval of counsel fees and disbursements to be paid out of the settlement funds. This national class action has been actively managed and was fully litigated in respect to certification before me.
- [2] The settling defendants are:
 - (a) TEAC Corporation, TEAC America, Inc. and TEAC Canada, Ltd., in the amount of USD \$500,000;
 - (b) NEC Corporation and NEC Canada, Inc., in the amount of \$730,000; and
 - (c) Hitachi-LG Data Storage Inc. and Hitachi-LG Data Storage Korea, Inc. in the amount of \$8,123,940.
- [3] The application notes that the subject settlements and payment of counsel fees have been approved by the Quebec Superior Court (Justice Nadeau) and the Ontario Superior Court (Justice Rady) subject to approval from each of the other courts. I am told that the reason the applications were brought before those courts first was because of scheduling issues.
- [4] I have now had a chance to consider the applications and conclude that the settlements are fair, reasonable, and in the best interests of the class.
- [5] As discussed at some length during the hearing of the applications I have concerns regarding the negotiated extension of the class period in each of the settlements. The application materials do not set out how the settlement reflects the incremental amount for the expansion; nor does it set out what it obtained for umbrella purchasers.
- [6] The aspect of the expanded class and implications were not brought to my attention at the time the hearing of application for the issuance of the notice of settlements; at least I did not recognize their significance. Issues such as the ability of the certified representative plaintiff to represent the expanded class and the authority of such representative plaintiff to provide counsel proper instructions were not canvassed.

- [7] However, I recognize that settlements are not outcomes of precision but rather reflect a dynamic balancing act of multiple factors in the context of uncertainty; that the notice of the settlement approval set out the expanded class period; and that no "opt outs" have been received. I accept the risks identified by the plaintiff in reaching the settlements and find that the settlements are fair, reasonable and in the best interests of the class.
- [8] In future, applicants should draw the courts attention to the fact of an expanded class period and the implications in respect to the certification obtained from the court.
- [9] On a related matter, I note that Schedule D to the Hitachi Settlement agreement was not provided in the application materials and is to be filed and delivered to me.
- [10] I now turn to the application regarding fees and disbursements.
- [11] In this case, there is an absence of a review by the representative plaintiff of the disbursements which are significant and total \$348,568.86 to date. Further, there is no evidence in the materials setting out the disbursements in detail and their justification. Review of fees and disbursements is an important function of the representative plaintiff. I require evidence from the representative plaintiff that he has reviewed the disbursements, made adequate inquiries, received full and frank disclosure from counsel, and has concluded that they are acceptable. I also require counsel to provide a listing of disbursements reviewed with the representative plaintiff and justification for the disbursements. Payment of disbursement at this point is not approved.
- [12] In regard to fees, counsel seeks the pay out of \$2,061,435.52 CDN and \$116,000 USD from the settlement funds. The amounts reflect a 25% contingency fee.
- [13] Alignment between the payment of counsel and the recovery of funds by clients is important. In this case, it will be some time before the class members will see a distribution of the funds. The proposal of counsel is that the funds (other than their fees) be held in trust pending the outcome of the litigation against the other defendants. It is likely there will be additional processes required to determine the method of distribution of funds between disparate groups within the class, which was the case in the DRAM litigation: *Pro-Sys v. Infineon*, 2013 BCSC 316. Without taking anything away from the result obtained by counsel here, counsel have much more work to do on behalf of the class -- which efforts remain subject to court review.
- [14] In my view, two-thirds of the applied for fees are approved for payout on an interim basis. Final approval of all fees is subject to all matters being finalized in this class proceeding and reviewed by this court with any submissions from the representative plaintiff and class members. "The Honourable Mr. Justice Masuhara"

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