

CANADA / JUDGMENT

Pro-Sys Consultants Ltd. v. Infineon Technologies AG

2010 BCCA 91

COURT

British Columbia Court of Appeal

DECIDED

23 February 2010

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2010 BCCA 91 Pro-Sys Consultants Ltd. v. Infineon Technologies AG COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Pro-Sys Consultants Ltd. v. Infineon Technologies AG, 2010 BCCA 91 Date: 20100223 Docket: CA036142 Between: Pro-Sys Consultants Ltd. Appellant (Plaintiff) And Infineon Technologies AG, Infineon Technologies North America Corp., Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co. Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Eelectronics Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies, Elpida Memory, Inc. and Elpida Memory (USA) Inc. Respondents (Defendants) Before: The Honourable Madam Justice Ryan The Honourable Mr. Justice Smith The Honourable Mr. Justice Bauman Reasons Settling the Form of Order. Court of Appeal for British Columbia, November 12, 2009 (Pro-Sys Consultants Ltd. v. Infineon Technologies AG, 2009 BCCA 503 Counsel for the Appellant: J.J. Camp, Q.C., R. Mogerman Counsel for the Respondent, Infineon: K.L. Kay, E.N. Kolers Counsel for the Respondent, Hynix F.P. Morrison, W.B. Milman, E.S. Block Counsel for the Respondent, Samsung N. Finkelstein, R.E. Kwinter Counsel for the Respondent, Micron D.M. Low, Q.C., D.W. Kent Counsel for the Respondent, Elpida C.P. Naudie, T.J. Mallett Place and Date of Hearing: Vancouver, British Columbia February 24, 25 & 26, 2009 Written Submissions Received: January 5, 8 & 25, 2010 Place and Date of Reasons Settling the Form of Order: Vancouver, British Columbia February 23, 2010 Reasons Settling the Form of Order:

- [1] On November 12, 2009, we gave reasons for judgment allowing this appeal, setting aside the order of the Honourable Mr. Justice Masuhara of the Supreme Court of British Columbia dismissing the appellant's application to certify the proceeding as a class proceeding, and granting that application.
- [2] The appellant submitted a draft of the Court's order to the Registrar. The respondents did not submit a form of order but, since they objected that the appellant's draft did not accurately express the decision of the Court, the Registrar referred the matter to us to settle the order.

- [3] With some revisions, the appellant's draft accurately expresses our decision. We have settled the order in the form attached as Schedule "A".
- [4] The order is, of course, subject to the broad discretionary powers of the judges of the trial court to manage the proceeding pursuant to the Class Proceedings Act in such manner as they think necessary to give effect to the purposes of the statute, including the power to revise or add to the common issues as may be appropriate in the circumstances as they may develop. "The Honourable Madam Justice Ryan" "The Honourable Mr. Justice K. Smith" "The Honourable Mr. Justice Bauman" SCHEDULE "A" Court of Appeal File No. CA036142 Supreme Court File No. L043141 COURT OF APPEAL Between: Pro-Sys Consultants Ltd. Appellant (Plaintiff) and: Infineon Technologies AG, Infineon Technologies North America Corp., Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd. Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies, Elpida Memory, Inc. and Elpida Memory (USA) Inc. Respondents (Defendants) BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50 ORDER BEFORE: THE HONOURABLE MADAM JUSTICE RYAN THE HONOURABLE MR. JUSTICE SMITH THE HONOURABLE MR. JUSTICE BAUMAN Vancouver, British Columbia, the 12th day of November, 2009. THE APPEAL from the judgment of The Honourable Mr. Justice Masuhara of the Supreme Court of British Columbia at Vancouver, British Columbia, dated August 25, 2008, coming for hearing on February 24, 25 and 26, 2008, AND ON HEARING J.J. Camp, Q.C. and Reidar Mogerman, counsel for the Appellants, Pro-Sys Consultants Ltd.; and K.L. Kay and E.N. Kolars, counsel for the Respondents, Infineon Technologies AG and Infineon Technologies North America Corp.; F.P. Morrison, W.B. Milman and E.S. Block, counsel for the Respondents, Hynix Semiconductor Inc., Hynix Semiconductor America Inc. and Hynix Semiconductor Manufacturing America, Inc.; N. Finkelstein and R.E. Kwinter, counsel for the Respondents, Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc. and Samsung Electronics Canada Inc.; D.M. Low, Q.C. and D.W. Kent, counsel for the Respondents, Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies; C.P. Naudie and T.J. Mallett, counsel for the Respondents, Elpida Memory, Inc. and Elpida Memory (USA) Inc.; AND ON READING the materials filed herein; AND ON JUDGMENT BEING RESERVED TO THIS DATE; THIS COURT ORDERS that the appeal is allowed, the judgment of The Honourable Mr. Justice Masuhara is set aside, and the appellant's application for an order certifying the proceeding below as a class proceeding pursuant to the Class Proceedings Act, R.S.B.C. 1996, c. 50 is granted on the following terms:
1. The class shall be described as: the plaintiff and all persons resident in British Columbia [excluding: the defendants and their present and former parents, subsidiaries and affiliates; direct purchasers of DRAM (and their affiliates, agents and shareholders etc.) who have fully settled their DRAM claims in actions against the respondents in the United States; and the judge hearing this application and his or her immediate family] who purchased DRAM or

products which contained DRAM (collectively the "Class Members") from April 1, 1999 to June 30, 2002 (the "Class Period");

2. The common issues shall be: Breach of the Competition Act
 - (a) Did the defendants, or any of them, engage in conduct which is contrary to s. 45 of the Competition Act?
 - (b) What damages, if any, are payable by the defendants to the Class Members pursuant to s. 36 of the Competition Act?
 - (c) Should the defendants, or any of them, pay the full costs, or any, of the investigation into this matter pursuant to s. 36 of the Competition Act? Conspiracy
 - (d) Did the defendants, or any of them, conspire to harm the Class Members?
 - (e) Did the defendants, or any of them, act in furtherance of the conspiracy?
 - (f) Was the predominant purpose of the conspiracy to harm the Class Members?
 - (g) Did the conspiracy involve unlawful acts?
 - (h) Did the defendants, or any of them, know that the conspiracy would likely cause injury to the Class Members?
 - (i) Did the Class Members suffer economic loss?
 - (j) What damages, if any, are payable by the defendants, or any of them, to the Class Members?
 - (k) Can the amount of damages be determined on an aggregate basis and if so, in what amount?
Tortious Interference with Economic Interests (I) Did the defendants, or any of them, intend to injure the Class Members?
 - (m) Did the defendants, or any of them, interfere with the economic interests of the Class Members by unlawful or illegal means?
 - (n) Did the Class Members suffer economic loss as a result of the defendants' interference?
 - (o) What damages, if any, are payable by the defendants, or any of them, to the Class Members?
 - (p) Can the amount of damages be determined on an aggregate basis and if so, in what amount?
Unjust Enrichment, Waiver of Tort and Constructive Trust
 - (q) Have the defendants, or any of them, been unjustly enriched by the receipt of overcharges on the sale of DRAM?
 - (r) Have the Class Members suffered a corresponding deprivation in the amount of the overcharges on the sale of DRAM?
 - (s) Is there a juridical reason why the defendants, or any of them, should be entitled to retain the overcharges on the sale of DRAM?

- (t) What restitution, if any, is payable by the defendants, or any of them, to the Class Members based on unjust enrichment?
- (u) Should the defendants, or any of them, be constituted as constructive trustees in favour of the Class Members for all of the overcharges from the sale of DRAM?
- (v) What is the quantum of the overcharges, if any, that the defendants, or any of them, hold in trust for the Class Members?
- (w) What restitution, if any, is payable by the defendants to the Class Members based on the doctrine of waiver of tort?
- (x) Are the defendants, or any of them, liable to account to the Class Members for the wrongful profits that they obtained on the sale of DRAM to the Class Members based on the doctrine of waiver of tort?
- (y) Can the amount of restitution be determined on an aggregate basis and if so, in what amount? Punitive Damages
- (z) Are the defendants, or any of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and if so, what amount and to whom? Interest (aa) What is the liability, if any, of the defendants, or any of them, for court order interest? Distribution of Damages and/or Trust Funds (bb) What is the appropriate distribution of damages and/or trust funds and interest to the Class Members and who should pay for the cost of that distribution? AND THIS COURT FURTHER ORDERS that a case management hearing should be convened at the earliest convenience of the parties and a justice of the British Columbia Supreme Court ("Supreme Court") for the purposes of refining the Notice to Class Members. AND THIS COURT FURTHER ORDERS that Pro-Sys Consultants Ltd. is a suitable representative plaintiff. AND THIS COURT FURTHER ORDERS that the Litigation Plan shall be approved as sufficient at this stage. AND THIS COURT FURTHER ORDERS that Notice shall be given to Class Members in the time and manner to be directed by the Supreme Court after further submissions by the parties AND THIS COURT FURTHER ORDERS that the time and manner for opting out of the proceeding shall be as directed by the Supreme Court after further submissions by the parties. BY THE COURT Deputy Registrar

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Prepared on 29 October 2026 · Esheria