

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 2ND DAY
MR. JUSTICE PERELL) OF SEPTEMBER, 2015

B E T W E E N :

KHURRAM SHAH and ALPINA HOLDINGS INC.

Plaintiffs

and

**LG CHEM, LTD., LG CHEM AMERICA, INC., PANASONIC CORPORATION,
PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC.,
SANYO ELECTRIC CO., LTD., SANYO NORTH AMERICA CORPORATION, SANYO
ENERGY (U.S.A.) CORPORATION, SONY CORPORATION, SONY ENERGY
DEVICES CORPORATION, SONY ELECTRONICS, INC., SONY OF CANADA LTD.,
SAMSUNG SDI CO., LTD., SAMSUNG SDI AMERICA, INC., SAMSUNG
ELECTRONICS CANADA INC., HITACHI, LTD., HITACHI MAXELL, LTD.,
MAXELL CORPORATION OF AMERICA, MAXELL CANADA, GS YUASA
CORPORATION, NEC CORPORATION, NEC TOKIN CORPORATION, NEC
CANADA, TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC
COMPONENTS, INC., and TOSHIBA OF CANADA LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Dismissal as against GS Yuasa Corporation**

THIS MOTION, made by the Plaintiffs for an Order that the within proceeding be dismissed as against the Defendant GS Yuasa Corporation (“GS Yuasa”) was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, and on hearing the submissions of counsel for the Plaintiffs and for GS Yuasa, the non-settling defendants taking no position in respect of the Order sought:



1. **THIS COURT ORDERS** that the within proceeding be and hereby is dismissed as against GS Yuasa on the following terms:

- (a) The dismissal is without costs;
- (b) The dismissal is without prejudice until February 25, 2016;
- (c) The dismissal shall, by the mere passage of time, become with prejudice in all respects on February 25, 2016, unless otherwise agreed to by the parties or ordered by this Court as provided for herein;
- (d) Until the dismissal becomes a dismissal with prejudice, the Plaintiffs may, pursuant to Rule 26.01 of the *Rules of Civil Procedure*, move for leave to amend their (then current) Statement of Claim to add claims against GS Yuasa (the “**Amendment Motion**”) based upon a demonstration to the satisfaction of the Court: (i) that the Plaintiffs have discovered evidence against GS Yuasa with respect to the matters that are the subject of the within proceeding that was not previously accessible to them, and which merits the reinstatement of claims against GS Yuasa; and (ii) that the Plaintiffs have otherwise satisfied all of the requirements of Rules 26.01 and 5.04(2) of the *Rules of Civil Procedure*, including, without limitation, issues with respect to prejudice. Nothing herein shall be construed to limit GS Yuasa’s ability to challenge the propriety of any proposed amendment to the Plaintiffs’ pleading in the within proceeding;
- (e) If the Plaintiffs decide to bring the Amendment Motion, the Plaintiffs shall provide GS Yuasa with no less than fifteen (15) days written notice of their intention prior to making any filing with the Court;

- (f) Both the notice referred to in paragraph 1(e) above as well as the motion materials may be provided and served on GS Yuasa by delivery to Stikeman Elliott LLP as counsel of record for GS Yuasa;
- (g) For greater certainty, the Amendment Motion cannot be brought by the Plaintiffs after February 25, 2016;
- (h) GS Yuasa shall promptly notify the Plaintiffs in the event that steps are taken in the U.S. MDL *In Re Lithium Ion Batteries Antitrust Litigation* proceedings in the United States District Court, Northern District of California by the U.S. plaintiffs seeking to amend their complaint to add GS Yuasa;
- (i) During the period between the date of this Order and February 25, 2016, GS Yuasa shall be treated for all purposes as a non-party to the within proceeding. Except as agreed by the parties or ordered by the Court, GS Yuasa shall not, *inter alia*, be subject to, or participate in, discovery as a party in the proceeding, shall not participate in or be bound by any motion brought by any party except the Amendment Motion (but GS Yuasa shall be served with any motion brought by a party), including but not limited to motions related to class certification, and shall not be bound by any Court order entered during the period. GS Yuasa is under a continuing obligation to preserve documents relevant to the within proceeding until the dismissal becomes with prejudice;
- (j) In the event that the Court allows the Amendment Motion, GS Yuasa shall be entitled to conduct discovery and litigate on its own behalf any matters that have been addressed during the intervening period. The Plaintiffs may not assert that

GS Yuasa is bound by any discovery conducted in the interim, is not entitled to conduct discovery anew, or is bound by any decisions of the Court with respect to other defendants, and GS Yuasa may litigate all such matters on the facts particular to GS Yuasa. With respect to class certification matters, should the Court allow the Amendment Motion, GS Yuasa shall be entitled to a reasonable period of time to address class certification in a manner not duplicative of any prior motion regarding class certification;

- (k) From the date of this Order until the dismissal becomes with prejudice, the tolling provisions in section 28(1) of the *Class Proceedings Act, 1992*, SO 1992, c.6 apply to GS Yuasa;
- (l) The delivery of a notice of motion for the Amendment Motion shall extend the tolling provisions in section 28(1) of the *Class Proceedings Act, 1992*, SO 1992, c.6 as against GS Yuasa until the date the Amendment Motion is finally determined by the Court and, if the motion is granted, GS Yuasa shall be deemed to have been a defendant continuously from the date of issuance of the Statement of Claim in the within action.

2. **THIS COURT ORDERS** that notice pursuant to sections 19 and 29 of the *Class Proceedings Act, 1992*, SO 1992, c.6, is not required.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 04 2015

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

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The Honourable Mr. Justice Perell

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Dismissal as against GS Yuasa Corporation**

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