

Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

RANDALL KLEIN INC.

Plaintiff

- and -

NAN YA PLASTICS CORP., NAN YA PLASTICS CORPORATION,
AMERICA (a/k/a NAN YA PLASTICS CORPORATION USA), WELLMAN, INC.,
ARTEVA SPECIALTIES, S.a.r.l. a/k/a KOSA, ARTEVA SPECIALTIES L.L.C.,
INDUSTRIES, INC., IMASAB S.A. de C.V., E.I. DUPONT DE NEMOURS COMPANY
LLC, DAK AMERICAS LLC, DAK FIBERS LLC, ROBERT BRADLEY DUTTON,
and TROY F. STANLEY, SR.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in the Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period of serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date issued:

MAR 11 2003

Issued By:


Local Registrar

London Court House
80 Dundas Street
London, Ontario
N6A 6A3

TO: NAN YA PLASTICS CORP.
201 Tung Hwa Road
Taipei, Taiwan, R.O.C.

AND TO: NAN YA PLASTICS CORPORATION AMERICA (a/k/a NAN YA PLASTICS CORPORATION USA)
9 Peach Tree Hill Rd.
Livingston, NJ 07039

AND TO: WELLMAN, INC.
595 Shrewsbury Avenue
Shrewsbury, NJ 07702

AND TO: ARTEVA SPECIALTIES, S.a.r.l. a/k/a KOSA
15710 John F. Kennedy Blvd.
Houston, TX 77032

AND TO: ARTEVA SPECIALTIES L.L.C.
4501 Charlotte Park Drive
Charlotte, NC 28217

AND TO: KOCH INDUSTRIES, INC.
PO Box 2256
Wichita, KS 67201-2256

AND TO: IMASAB S.A. de C.V.
Mexico City, Mexico

AND TO: E.I. DUPONT DE NEMOURS COMPANY LLC
1007 Market Street
Wilmington, DE 19898

AND TO: DAK AMERICAS LLC
6324 Fairview Road
Charlotte, NC 28210

AND TO: DAK FIBERS LLC
6324 Fairview Road
Charlotte, NC 28210

AND TO: ROBERT BRADLEY DUTTON
6338 Oleander Drive
Wilmington, NC 28403

AND TO: TROY F. STANLEY, SR.
193 Line Drive
Forest City, NC 28043

C L A I M

1. The Plaintiff, Randall Klein Inc., claims on its own behalf and on behalf of persons similarly situated in Canada:
 - a. general damages for conspiracy in the amount of \$50,000,000.00;
 - b. general damages for intentional interference with economic relations, in the amount of \$50,000,000.00;
 - c. general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S. 1985, c. 19 (2nd Supp.), s.36, in the amount of \$50,000,000.00;
 - d. punitive and exemplary damages in the amount of \$10,000,000.00;
 - e. pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.128;
 - f. costs of this action on a solicitor and client basis;
 - g. such further and other relief as this Honourable Court seems just.

THE PLAINTIFF

2. The plaintiff, Randall Klein Inc., is a corporation with its head office in London, Ontario. The plaintiff carries on business as a furniture manufacturer and retailer.

THE DEFENDANTS

3. Nan Ya Plastics Corp. ("Nan Ya Taiwan") is a Taiwanese corporation with its principal place of business in Taiwan. During the relevant time, Nan Ya Taiwan manufactured, distributed, and/or sold polyester staple in North America. Nan Ya Taiwan does business in North America through its wholly owned subsidiary, Nan Ya Plastics Corporation, America.

4. Nan Ya Plastics Corporation, America a/k/a Nan Ya Plastics Corporation USA (“Nan Ya U.S.”) is a Delaware corporation with its principal place of business in Livingston, New Jersey. During the relevant time, Nan Ya U.S. manufactured, distributed, and/or sold polyester staple in North America.
5. The business of each of Nan Ya Taiwan and Nan Ya U.S. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and distribution of polyester staple and for the purposes of the conspiracy described hereinafter.
6. Arteva Specialties, L.L.C. (“Arteva”) is a North Carolina corporation with its principal place of business in Charlotte, North Carolina. Arteva Specialties S.a.r.l. a/k/a/ KoSa is licensed to carry on business in North Carolina as Arteva Specialties, L.L.C. During the relevant time, Arteva manufactured, distributed, and/or sold polyester staple in North America.
7. Arteva Specialties S.a.r.l. a/k/a KoSa (“KoSa”) is a Luxembourg corporation with its principal place of business in Houston, Texas. During the relevant time period, KoSa was wholly owned by the defendants, IMASAB S.A. de C.V. and Koch Industries, Inc., through Koch’s wholly owned subsidiaries, Koch International Equity Investments BV and Koch Equities, Inc. IMASAB has subsequently sold its interest in KoSa to Koch and therefore, KoSa is now wholly owned by Koch through its wholly owned subsidiaries. KoSa is licensed to, and does, carry on business in North Carolina as Arteva Specialties, L.L.C. During the relevant time, KoSa manufactured, distributed, and/or sold polyester staple in North America.

8. Koch Industries, Inc., ("Koch") is a Kansas corporation with its headquarters in Wichita, Kansas. Koch owns KoSa through two wholly owned subsidiaries: Koch International Equity Investments BV and Koch Equities, Inc. During the relevant time, Koch manufactured, distributed, and/or sold polyester staple in North America.
9. IMASAB S.A. de C.V. ("IMASAB") is a Mexican corporation with its principle place of business in Mexico City. During the relevant time, IMASAB owned 50% of KoSa. During the relevant time, IMASAB manufactured, distributed, and/or sold polyester staple in North America.
10. The business of each of Arteva, KoSa, Koch, and IMASAB are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and distribution of polyester staple and for the purposes of the conspiracy described hereinafter.
11. Wellman, Inc. is a corporation incorporated under the laws of Delaware, U.S.A, with its principal place of business in Shrewsbury, New Jersey. During the relevant time, Wellman manufactured, distributed, and/or sold polyester staple in North America.
12. E.I. DuPont de Nemours Company LLC ("DuPont") is a Delaware corporation with its principle place of business in Wilmington, Delaware. At all relevant times, DuPont manufactured, distributed, and/or sold polyester staple in North America directly and/or through its agents, including DuPont-Akra Polyester LLC, a joint venture between Dupont and Alpek S.A. de C.V. DuPont-Akra Polyester LLC is now known as DAK Fibers LLC.

13. DAK Fibers LLC (“DAK Fibers”) is a Delaware corporation with its principal place of business in Charlotte, North Carolina. During the relevant time, DAK manufactured, distributed, and/or sold polyester staple in North America. DAK was formerly known as DuPont-Akra Polyester LLC.
14. DAK Americas LLC (“DAK America”) is a Delaware corporation with its principal place of business in Charlotte, North Carolina. During the relevant time, DAK America manufactured, distributed, and/or sold polyester staple in North America through DAK Fibers.
15. The business of each of Dupont, DAK Fibers, and DAK America, is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and distribution of polyester staple and for the purposes of the conspiracy described hereinafter.
16. Troy F. Stanley, Sr. is an individual resident in the U.S. Stanley is the former Business Director of Textile Staple for KoSa.
17. Robert Bradley Dutton, is an individual resident in Wilmington, North Carolina. Dutton is a former sales manager for Nan Ya Taiwan.
18. The acts alleged in this complaint to have been done by each Defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

19. Various persons and/or firms, not named as Defendants herein, may have participated as co-conspirators in the violation alleged herein and may have performed acts and made statements in furtherance thereof.

FACTUAL BACKGROUND

20. Polyester staple is a man-made, petroleum based fiber that is manufactured in varying thicknesses and lengths. Polyester staple fiber, is used to make textiles, fabrics, clothing, home furnishings and many other products.
21. The named Defendants supply a substantial majority of the total volume of polyester staple sold in Canada.

THE CONSPIRACY

22. The Plaintiff alleges that the Defendants were involved in a conspiracy as detailed herein.
23. At various times in the period between at least September 1, 1999 and January 31, 2001, senior representatives of the Defendants, including one or more officers, engaged in conversations and attended meetings with each other.
24. As a result of these conversations and meetings, the Defendant corporations entered into a conspiracy in which they unlawfully agreed to the price at which each company would sell polyester staple to customers in Canada and to the volume that each company would supply to customers in Canada.

25. In furtherance of the conspiracy, during the relevant time, the following acts were done by the Defendants and their servants and agents:

- (a) they met secretly to discuss prices and volumes of sales of polyester staple;
- (b) they agreed to, and did, fix and maintain prices and coordinate price increases for the sale of polyester staple;
- (c) they agreed to, and did, allocate the volumes of sales, customers, and markets for polyester staple among themselves;
- (d) they agreed to refrain from bidding or to submit intentionally high, complementary and non-competitive bids for particular polyester staple supply contracts;
- (e) they exchanged information regarding the prices and volumes of sales of polyester staple for the purpose of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (f) they instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy;
- (g) they took active steps to conceal the unlawful conspiracy from their customers, the authorities, and the public; and
- (g) they disciplined any corporation which failed to comply with the conspiracy.

26. The Defendants were motivated to conspire and their predominant purpose and intention was:
- (a) to harm the plaintiff and members of the public by requiring them to pay artificially high prices for polyester staple;
 - (b) to harm the members of the public, including the plaintiff, who purchased polyester staple or products containing polyester staple by requiring them to pay artificially high prices for polyester staple or the products containing polyester staple; and
 - (c) to illegally increase their profits on the sale of polyester staple.
27. The acts particularized in paragraphs 23 to 26 were unlawful acts directed towards the purchasers of polyester staple or products containing polyester staple, including the plaintiff, which unlawful acts the defendants knew in the circumstances would likely cause injury to those purchasers and plaintiffs and the defendants are liable for the tort of civil conspiracy.
28. Alternatively, the acts particularized in paragraphs 23 to 26 were unlawful acts undertaken by the Defendants with the intent to injure purchasers of polyester staple or purchasers of products containing polyester staple, including the plaintiff, and the defendants are liable for the tort of intentional interference with economic interests.
29. The acts particularized in paragraphs 23 to 26 were also in breach of Part VI of the *Competition Act* and render the defendants liable to pay the damages pursuant to s. 36 of the *Competition Act*.

30. Robert Bradley Dutton, a former sales manager for Nan Ya Plastics corporation, was indicted in the U.S. on September 13, 2002, for conspiring to fix prices and allocate customers in the polyester staple industry. The indictment alleges participation of other unnamed co-conspirators in the unlawful conspiracy.
31. Arteva Specialties, S.A.R.L., d/b/a KoSa, and its former director of textile staples, Troy F. Stanley, each agreed to plead guilty in the U.S. for participating in a conspiracy to fix prices and allocate customers in the polyester staple industry. Arteva agreed to pay a \$28.5 million criminal fine while Stanley agreed to pay a \$20,000 criminal fine and to serve eight months in jail.
32. The Plaintiff suffered damages as follows:
 - a. The price of polyester staple purchased by the Plaintiffs has been fixed, raised, maintained and stabilized at artificial and non-competitive levels; and
 - b. Competition in the sale of polyester staple has been restrained.
33. During the period covered by this claim, the Plaintiff purchased polyester staple manufactured by the Defendants. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff paid more for polyester staple and/or products containing polyester staple than it would have paid in the absence of the illegal combination and conspiracy and, as a result, it has been injured in its business and property and has suffered damages in an amount presently undetermined.
34. The Plaintiff's damages have been suffered in the Province of Ontario.

35. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), s.36.
36. The Plaintiff pleads and relies on section 17 (g), (h), (p) of the *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign Defendants.
37. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.
38. The Plaintiff states that it is representative of persons who purchased polyester staple or products containing polyester staple during the relevant time period.
39. The Plaintiff proposes that this action be tried at London, Ontario.

March 11, 2003

Siskind, Cromarty, Ivey & Dowler LLP
680 Waterloo Street
London, Ontario N6A 3V8

Michael A. Eizenga LSUC # 31470T
Charles M. Wright LSUC #36599Q
Andrea L. DeKay LSUC # 43818M
Tel: (519) 672-2121
Fax: (519) 672-6065