

CITATION: Clark v. Minebeamisumi Inc., 2022 ONSC 178
COURT FILE NO.: 852/16
DATE: 20220107

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sharon Clark, Plaintiff

AND:

Minebeamitsumi Inc. (formerly Minebea Co., Ltd.); NMB (USA) Inc.; NMB Korea Co., Ltd.; NMB Technologies Corporation; New Hampshire Ball Bearings, Inc; NSK Ltd.; and NSK Canada Inc., Defendants

BEFORE: Justice R. Raikes

COUNSEL: Jonathan Foreman and Anne Legate-Wolfe - Counsel, for the Plaintiff

Robert Kwinter - Counsel, for the NSK Defendants

HEARD: January 7, 2022

ENDORSEMENT

- [1] The plaintiff moves for an order certifying this action for settlement purposes, and for approval of the notice plan and notices to class for the settlement approval hearing.
- [2] The plaintiff has entered into a settlement agreement dated December 17, 2020 with the NSK defendants. Those defendants are the last remaining defendants in the action. The action was discontinued as against New Hampshire Ball Bearings. An earlier settlement was made and approved with NMB defendants.
- [3] There are parallel class proceedings in Quebec and British Columbia. Plaintiff's counsel has worked in concert with class counsel in those actions to achieve this settlement. The settlement requires court approval from all three courts failing which the settlement and any orders made in respect of same are void and the action proceeds as if no settlement was reached.
- [4] I previously certified this action as a class proceeding in relation to the NMB defendants. The opt out period expired February 6, 2019 with no opt outs.
- [5] The material filed for this motion to certify for settlement purposes is substantially the same as that for the NMB settlement. The law applicable is the same. The analysis done earlier applies equally to this motion.
- [6] This is an alleged price fixing action involving small ball bearings sold in Canada between June 1, 2003 and October 31, 2011.

[7] I am satisfied that for settlement purposes only, the criteria in s. 5(1) of the *Class Proceedings Act, 1992, as amended*, are met:

- a. The amended statement of claim discloses a cause of action;
- b. There is an identifiable class of two or more persons. The class definition below is rationally connected to the claim asserted and the proposed common issue. It uses objective criteria by which members of the class can readily ascertain whether they are included in the class or not;
- c. There is an agreed common issue: “Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Ball Bearings directly or indirectly in Canada during the Class Period. If so, what damages, if any, did Ontario settlement class members suffer?”;
- d. A settlement, if ultimately found to be fair and reasonable, is preferable to continued litigation with the risk and uncertainty that entails; and
- e. The plaintiff is an acceptable representative plaintiff with no conflict of interest with other class members on the common issue.

[8] The agreed upon class definition is:

All persons in Canada who purchased Ball Bearings or Ball Bearings Products during the Class Period other than (1) all Quebec Settlement Class Members, (2) all British Columbia Settlement Class Members, and (3) Excluded Persons;

Ball Bearings means: small sized bearings with an outside diameter of 26 millimeters or less;

Ball Bearings Products means: any and all products that contain Ball Bearings;

Class Period means: June 1, 2003 to October 31, 2011; and

Excluded Persons means: each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of the Defendant’s subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.


[9] Accordingly, the action is certified for settlement purposes.

Notice Plan and Notices

[10] The notice plan proposed is satisfactory and is approved. It includes, *inter alia*, a press release, notice to consumer groups, notice on the EP & T website, Banner ads using Google Display, Facebook, and Post Media network, and direct mailing of the notices to importers and class members known and/or identified to class counsel. It strikes me as a

reasonable approach likely to bring the settlement and hearing for approval of the settlement to the attention of class members.

- [11] I asked for a couple of small changes to the proposed notices. The notices are in the usual form. They inform class members of the settlement terms and where to get greater detail. They also alert class members to the class counsel fees requested. The notices set out how to object or comment upon the settlement and class counsel fees including how to participate in the approval hearing if desired.
- [12] The notices are approved subject to the changes I requested.
- [13] Counsel are asked to forward a further draft order to my attention.



Justice R. Raikes

Date: January 7, 2022