

No. S-211884  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between:

KEVIN CHARLTON

Plaintiff

and:

MUSASHI BOCKENAU GMBH & CO. KG, HIRSCHVOGEL  
UMFORMTECHNIK GMBH, BHARAT FORGE CDP GMBH, AND  
BHARAT FORGE GLOBAL HOLDING GMBH

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION FOR  
APPROVAL OF MUSASHI SETTLEMENT AGREEMENT**

BEFORE

) THE HONOURABLE  
MR. JUSTICE VEENSTRA )

06/Sep/2024

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on September 6, 2024 and on hearing Sam Jaworski, Saro Turner, and Chris Shanks, articling student, counsel for the plaintiff; Joan M. Young, Joshua Chad, and Neil Campbell, counsel for the defendant Musashi Bockenau GmbH & Co. KG; Robin Reinertson, counsel for the defendant Hirschvogel Umformtechnik GmbH; and Erica Grant, counsel for the defendants Bharat Forge CDP GmbH and Bharat Forge Global Holding GmbH; and on reading the materials filed, including the Settlement Agreement; and on the consent of the Settling Defendant; and the Non-Settling Defendants taking no position;

This Court certified the Proceeding as a class proceeding as against Musashi Bockenau GmbH & Co. KG (the "Settling Defendant") for settlement purposes only on February 1, 2024.

Settlement Class Members were previously provided with the opportunity to opt-out of the Proceeding. The deadline for opting-out was July 30, 2024. No persons opted-out of the Proceeding.

Settlement Class Members were advised of the right to object to the Settlement Agreement. The deadline for objecting was July 30, 2024. Class Counsel received no objections.

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the settlement agreement reached with the Settling Defendant in relation to Supreme Court of British Columbia (Vancouver Registry) Court File No. S-211884 (the "Proceeding"), dated October 4, 2023 (the "Settlement Agreement", attached as Schedule "A") apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. The Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
4. The Settlement Agreement is approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 as amended and shall be implemented and enforced in accordance with its terms.
5. The Settlement Agreement is incorporated by reference to and forms part of this Order and is binding upon the Plaintiff and all Settlement Class Members.
6. This action is hereby dismissed against the Settling Defendant with prejudice and without costs against any party.
7. Upon the Effective Date,
  - (a) each Settlement Class Member shall be deemed to have irrevocably consented to the dismissal of any Other Actions he, she or it has commenced as against the Releasees, without costs and with prejudice; and

- (b) each Other Action commenced in British Columbia by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

8. This Order, including the Settlement Agreement, is binding upon each member of the Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the Proceeding.

9. Upon the Effective Date, in accordance with the Settlement Agreement, each Releasor (a) covenants to finally, fully, forever and absolutely waive, release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have; (b) will be enjoined forever from prosecuting in any forum any Released Claim against any of the Releasees; and (c) agrees or covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any of the Releasees related in any way to any Released Claim, Each Releasor acknowledges that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention; this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts. The terms "**Effective Date**", "**Releasors**", "**Releasees**" and "**Released Claims**" are prescribed the same meaning as provided in the Settlement Agreement and the use of these terms in this Order is a matter of form only for consistency with the Settlement Agreement.

10. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, provide assistance for, intervene in, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee whether pursuant to the *Negligence Act*, RSBC 1996, c. 333, *Quebec Code of Civil Procedure* or other legislation or at common law or equity in respect of any Released Claim, except for the

continuation of the Proceeding against the Non-Settling Defendants, named or unnamed alleged co-conspirators who are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

11. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding, or any Other Action, or otherwise by any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

12. In respect of all claims:

- (a) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability, as defined in the Settlement Agreement, of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed coconspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitution, disgorgement of

profits, costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*), and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceeding.

13. Nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of Settlement Class Members in the Proceeding or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

14. A Non-Settling Defendant may, on application to this Court determined as if the Settling Defendant remained a party to the Proceeding and on at least thirty (30) days' notice to Counsel for the Settling Defendant, and not to be brought unless and until the Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from the Settling Defendant;

- (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
- (c) leave to serve a notice to admit on the Settling Defendant; and/or
- (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

15. The Settling Defendant retains all rights to oppose such application(s) brought under paragraph 14. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or information obtained from discovery in accordance with paragraph 14. Notwithstanding any provision in this Order, on any application brought pursuant to paragraph 14 the Court may make such orders as to costs and other terms as it considers appropriate.

16. A Non-Settling Defendant may effect service of the application(s) referred to in paragraph 14 above on the Settling Defendant by service on their counsel of record in the Proceeding.

17. Nothing in this Order is intended to or shall limit or restrict the rights of the Non-Settling Defendants to seek relief against the Settling Defendant or any other person under the *Rules* applicable to non-parties to the Proceeding.

18. For the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant and the other Releasees acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement.

19. Except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in the Proceeding.

20. The Releasees have no responsibility for and no liability whatsoever relating to:

- (a) the administration of the Settlement Agreement;
- (b) the administration, investment, or distribution of the Trust Account; or
- (c) the Distribution Protocol

21. Class Counsel and the Claims Administrator shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and the Settling Defendant, as applicable, and make only such payments therefrom as are provided for in the Settlement Agreement, pending further orders of the Court.


22. This Order shall be declared null and void and of no force and effect on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

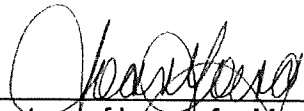
23. The Proceeding is hereby dismissed against the Settling Defendant without costs and with prejudice.

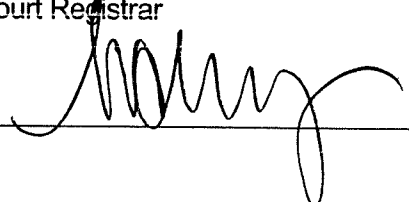
24. The approval of the Settlement Agreement and any reasons given in relation thereto, except any reasons given in connection with paragraphs 11 to 16 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the Proceeding and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding, as against the Non-Settling Defendants.

25. Endorsement of this Order by counsel for the Non-Settling Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of lawyer for the Plaintiff,  
Sam Jaworski

  
\_\_\_\_\_  
Signature of lawyer for Musashi  
Bockenau GmbH & Co. KG,  
Joan Young

By the Court Registrar  
  
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