

CITATION: Sigma Convector Enclosure Corp. v. Fluid Hose & Coupling Inc.,
2022 ONSC 5633
COURT FILE NO.: CV-21-00665329-0000
DATE: 20221004

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
 SIGMA CONVECTOR ENCLOSURE) *Robert C. Harason* for the Plaintiff
 CORP.)
 Plaintiff)
)
 - and -)
)
 FLUID HOSE & COUPLING INC., JOE) *Dana L. Eichler and Athina Ionita* for the
 PASTERNAK also known as JOSEPH) Defendants Fluid Hose & Coupling Inc., Joe
 PASTERNAK, BARBARA) Pasternak and Barbara Pasternak
 PASTERNAK AND TAIZHOU)
 CHUANGJU VALVE CO. LTD., also)
 known as 台州创巨阀门有限公)
)
 Defendants) **September 28, 2022**

PERELL, J.

FILE DIRECTION

[1] Sigma Convector Enclosure Corp. (“Sigma”) sues Fluid Hose & Coupling Inc. (“Fluid Hose”), Joe Pasternak, Barbara Pasternak, and Taizhou Chuangju Valve Co. Ltd. (“Taizhou”) for \$3.0 million.

[2] As against the Pasternaks and Fluid Hose, the Statement of Claim asserts claims of: (a) breach of contract; (b) misrepresentation; (c) inducing breach of contract; (d) negligence; (e) piercing the corporate veil; and (f) an oppression remedy pursuant to s. 248 of the Ontario *Business Corporations Act*.¹

[3] Although ineloquently pleaded, Sigma’s claims as against Taizhou are just the tort claims for products liability and misrepresentation. Sigma does not advance any contractual or statutory claims as against Taizhou.

[4] The claim as against Taizhou is in the process of being served in China, and the status of those efforts to effect service through Chinese government authorities remains unknown.

¹ R.S.O. 1990, c. B.16.

[5] The Pasternaks and Fluid Hose have defended, and they assert a crossclaim against Taizhou. The crossclaim has not been delivered to the Chinese government authorities for service.

[6] Pursuant to Rule 21 of the *Rules of Civil Procedure*,² the Pasternaks and Fluid Hose moved to have the oppression claim struck and the personal claims against the Pasternaks struck for not showing a reasonable cause of action.

[7] On the Pasternaks' and Fluid Hose's motion to strike, I ordered that except for the oppression remedy claim, all the personal claims against the Pasternaks be struck without leave to amend. On the Pasternaks' and Fluid Hose's motion, I dismissed the request to strike the oppression remedy claim against Fluid Hose and the Pasternaks.³

[8] I directed that Sigma shall have thirty days to deliver a Fresh as Amended Statement of Claim in accordance with the Reasons for Decision; *i.e.*, removing the claims it is not pursuing, deleting the personal claims against the Pasternaks other than the oppression remedy claim, deleting the piercing the corporate veil allegations, and adding the oppression remedy allegations contained in the email messages of November and December 2021.

[9] I directed that if the parties cannot agree about the matter of costs, then they may make submissions in writing beginning with Sigma's submissions within twenty days of the release of the Reasons for Decision followed by the Defendants' submissions within a further twenty days.

[10] The parties have delivered costs submissions, and I shall address those submissions by separate endorsement.

[11] The purpose of this case management conference is to settle the terms of the Order on the motion to strike and to give directions with respect to the next steps in this proceeding.

[12] In so far as the terms of the Order are concerned, I settle the Order as set out in Schedule "A" to this File Direction. I shall sign that Order, and it may be issued and entered by the Plaintiff.

[13] Pursuant to rule 50.13 (1) of the *Rules of Civil Procedure*, a judge may at any time, on his or her own initiative or at a party's request, direct that a case conference be held before a judge or associate judge.

[14] Rule 50.13 (6) provides the powers of a judge or associate judge at the case conference. The rule states:

Powers

(6) At the case conference, the judge or associate judge may, if notice has been given and it is appropriate to do so or on consent of the parties,

- (a) make a procedural order;
- (b) convene a pre-trial conference;
- (c) give directions; and
- (d) in the case of a judge,
 - (i) make an order for interlocutory relief, or

² R.R.O. 1990, Reg. 194.

³ *Sigma Convector Enclosure Corp. v. Fluid Hose & Coupling Inc.*, 2022 ONSC 4371

(ii) convene a hearing.

[15] In the immediate case, in so far as giving directions with respect to the next steps in this proceeding, I direct as follows:

- a. The Plaintiff shall have twenty days from today's date (September 28, 2022) to deliver its Fresh as Amended Statement of Claim.
- b. After the delivery of the Plaintiff's Fresh as Amended Statement of Claim to the Defendants Fluid Hose & Coupling Inc., Joe Pasternak, and Barbara Pasternak, these Defendants shall have thirty days: (a) to deliver an Amended Statement of Defence and Counterclaim; or (b) to bring a motion to strike the Fresh as Amended Statement of Claim, such motion to be made returnable before me.
- c. If the Defendants Fluid Hose & Coupling Inc., Joe Pasternak and Barbara Pasternak, do not: (a) deliver an Amended Statement of Defence and Counterclaim; or (b) bring a motion to strike the Fresh as Amended Statement of Claim, they may be noted in default.
- d. If the Defendants Fluid Hose & Coupling Inc., Joe Pasternak and Barbara Pasternak, do deliver an Amended Statement of Defence and Counterclaim, then the Plaintiff shall have ten days to deliver a Reply, if any, after which pleadings shall be closed, and the action shall proceed to documentary and oral discovery as between the Plaintiff and these Defendants.
- e. The production of documents and the examinations for discovery as between the Plaintiffs and the Defendants Fluid Hose & Coupling Inc., Joe Pasternak, and Barbara Pasternak shall proceed notwithstanding that Taizhou Chuangju Valve Co., Ltd. also known as 台州创巨阀门有限公司 may not yet have been served with the Statement of Claim and has not been served with the Amended Statement of Claim or the Amended Statement of Defence and Crossclaim.
- f. The costs of this case management conference shall be in the cause.

Perell, J.

Released: October 4, 2022

Schedule "A"

Court File No. CV-21-00665329-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONORABLE JUSTICE PERELL) TUESDAY, THE 26TH DAY OF JULY, 2022

BETWEEN :

SIGMA CONVECTOR ENCLOSURE CORP.

Plaintiff

- and -

FLUID HOSE & COUPLING INC., JOE PASTERNAK, also known as JOSEPH PASTERNAK
and BARBARA PASTERNAK and TAIZHOU CHUANGJU VALVE CO., LTD. also known as
台州创巨阀门有限公司

Defendants

ORDER

THIS MOTION, made by the Defendants Fluid Hose & Coupling Inc., Joe Pasternak also known as Joseph Pasternak and Barbara Pasternak for an order striking out, without leave to amend, the claims for breach of duty, in negligence, for inducing breach of contract and to pierce the corporate veil made in the Statement of Claim against Joe Pasternak also known as Joseph Pasternak and Barbara Pasternak and the claim for oppression made in the Statement of Claim against these Defendants, was heard in writing at Toronto and reasons for decision were delivered on this day.

ON READING these Defendants' Amended Motion Record, Factum and Costs Outline and the Plaintiff's Responding Record, Factum and Costs Outline, it appearing that on May 5, 2022, the Plaintiff withdrew the claims for breach of contract and misrepresentation made in the Statement of Claim against Joe Pasternak also known as Joseph Pasternak and Barbara Pasternak,

1. THIS COURT ORDERS that all of the personal claims including any claims permitting piercing the corporate veil against Joe Pasternak also known as Joseph Pasternak and Barbara Pasternak, except for the oppression remedy claim, shall be and the same are hereby struck out without leave to amend.
2. THIS COURT ORDERS that these Defendants' motion to strike out the Plaintiff's claim for oppression against these Defendants shall be and the same is hereby dismissed.

3. THIS COURT ORDERS that the Plaintiff shall have thirty days to deliver to the Defendants Fluid Hose & Coupling Inc., Joe Pasternak, and Barbara Pasternak a Fresh as Amended Statement of Claim in accordance with the Reasons for Decision.
4. THIS COURT ORDERS that service of the Fresh as Amended Statement of Claim on Taizhou Chuangju Valve Co., Ltd. also known as 台州创巨阀门有限公司 shall be and the same is hereby dispensed with.

JUSTICE PERELL

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BETWEEN:

SIGMA CONVECTOR ENCLOSURE CORP.
Plaintiff

- and -

**FLUID HOSE & COUPLING INC., JOE
PASTERNAK also known as JOSEPH
PASTERNAK, BARBARA PASTERNAK AND
TAIZHOU CHUANGJU VALVE CO. LTD., also
known as 台州创巨阀门有限公**

Defendants

FILE DIRECTION

PERELL, J.

Released: October 4, 2022