CITATION: Kamrani-Ghadjar v. Anaergia Inc., 2025 ONSC 499
COURT FILE NO.: CV-23-00000919-00CP
DATE: 20250123

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MOHAMMAD REZA KAMRANI-GHADJAR, Plaintiff

AND:

ANAERGIA INC., ANDREW BENEDEK, HANI EL-KAISSI, NEO INTERNATIONAL INVESTMENTS LTD. and CIDEL TRUST COMPANY, TRUSTEE OF THE BENEDEK TRUST, Defendants

BEFORE: The Honourable Justice Ranjan K. Agarwal

COUNSEL: Soheil Karkhanechi and Mahdi Hussein, for the plaintiff

Daniel Murdoch, for the defendants Anaergia Inc., Andrew Benedek, and Hani El-Kaissi

Matthew Fleming and Neil Rabinovitch, for the defendant Cidel Trust Company

No one appearing for the defendant Neo International Investments Ltd.

HEARD: January 17, 2025

ENDORSEMENT

I. OVERVIEW

[1] The plaintiff Mohammad Reza Kamrani-Ghadjar alleges that the defendants made misrepresentations to him and other investors in the defendant Anaergia Inc.'s public disclosure. Kamrani-Ghadjar moves for leave to proceed with this action under section 138.8(1) of the *Securities Act*, RSO 1990, c S.5, and for an order certifying this action as a class proceeding under section 5(1) of the *Class Proceedings Act, 1992*, SO

1992, c 6. The defendants move for summary judgement. The hearing of these motions are scheduled for April 2025.

[2] At a case conference on January 17, 2025, Kamrani-Ghadjar sought an order dismissing the action against the defendants Cidel Trust Company and Neo International Investments Ltd. and three procedural orders. I endorse an order *discontinuing* Kamrani-Ghadjar's action against Cidel and Neo. I also grant the parties' procedural requests.

II. DISMISSAL ORDER

[3] Cidel, Anaergia, and the individual defendants consent to Kamrani-Ghadjar's motion to dismiss the action against Cidel and Neo. Neo has not defended the action—as a result, it didn't take a position on this motion.

[4] When the action was commenced, Kamrani-Ghadjar understood that Neo had, during the class period, transferred its ownership interest in Anaergia to the defendant Andrew Benedek. Class Counsel learned that Neo had since been dissolved. Benedek remains a defendant. As a result, Kamrani-Ghadjar argues that there's no prejudice to the class if the action against Neo is dismissed.

[5] Cidel was included as a defendant based on the statement in Anaergia's IPO prospectus suggesting that the shares of Neo were registered in the name of the Benedek Trust, and that Cidel was the trustee of the Benedek Trust. Cidel was

arguably an "influential person" under the *Securities Act*. Kamrani-Ghadjar argues that establishing the liability of an influential person requires showing knowing influence over the company's release of impugned information. Given Neo's dissolution and the lack of any evidence that Cidel knowingly influenced Anaergia or the other defendants, Kamrani-Ghadjar submits there's no reasonable prospect of establishing liability against Cidel.

[6] To begin, while the *Rules of Civil Procedure* allow a plaintiff to discontinue its own action, they don't permit a plaintiff to bring a motion to dismiss it. See *Iroquois Falls Power Corp. v Jacobs Canada Inc.*, 2018 ONCA 412, at para 17. The *CPA* discusses discontinuances and dismissal for delay but not dismissals generally. As a result, I've treated Kamrani-Ghadjar's motion as a request to discontinue the action as against Neo and Cidel.

A. Should the discontinuance be approved?

[7] A proceeding under the *CPA* may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate. See *CPA*, s 29(1). For court approval of a discontinuance, the central issue for determination is whether the class members may be harmed by the discontinuance of the class proceeding. To grant a dismissal, the court must be satisfied that:

- the interests of the class won't be prejudiced

- the proceeding wasn't started for an improper purpose
- if necessary, there's a viable replacement party so that class members aren't prejudiced
- the defendant won't be prejudiced

See *Sollen v Boehringer Ingelheim (Canada) Ltd.*, 2008 ONCA 803, at para 3; *Underhill v Medtronic Canada*, 2023 ONSC 5919, at para 20.

[8] I'm satisfied that the class's interest won't be prejudiced if this action is discontinued against Neo and Cidel. Kamrani-Ghadjar was prudent in suing Neo and Cidel given the information he had. He's being equally prudent in ending the lawsuit given the information he now has. The defendants consent to the motion, meaning there is no prejudice to them. Class members maintain their claims against Anaergia, Benedek, and the other defendants.

[9] As a result, I endorse an order authorizing discontinuance of this action against Cidel and Neo. The discontinuance is "with prejudice"—no new action against Cidel and Neo may be brought by Kamrani-Ghadjar on the same cause. There shall be no costs of the action against Cidel or Neo.

B. Should notice be given to class members?

[10] In approving a discontinuance, the court shall consider whether notice should be given under section 19 of the *CPA*. See *CPA*, s 29(2) (formerly s 29(4)). The plaintiff must show that discontinuance without notice to the putative class will not give rise to prejudice or unfairness to members of the class. See *Smith v Crown Life Insurance Co.*, [2002] OJ no 5539, at para 27 (Sup Ct).

[11] Kamrani-Ghadjar argues that no notice is needed here because the action hasn't been certified yet and the dismissal only binds the class members.

[12] The mischief that section 29(2) is protecting against is clear. Class members may have been relying on Kamrani-Ghadjar to assert their claims against Neo and Cidel. If they don't know that Kamrani-Ghadjar has ended his lawsuit against those defendants, they may not start their own action. The limitation period would start running again and, eventually, they may be out of time. See *Chopik v Mitsubishi Paper Mills Ltd.*, [2003] OJ no 192, at para 16 (Sup Ct).

[13] In my view, it's prima facie prejudicial to class members for the limitation period to start running again without them knowing. Even if Class Counsel and the representative plaintiff believe the claim has no merit, class members should be allowed to diligence the issue themselves. As a result, some sort of notice should be the norm unless Class Counsel can rebut this presumption of unfairness based on the unique facts of the case.

[14] In *Karabogdan v Regent Holidays Ltd.*, [2002] OJ no 5969 (Sup Ct), Justice Cullity found that no notice to the class was needed. His decision was informed by the small size of the class, the time since the cause of action arose, and that the discontinuance followed a settlement of all known class members' claims. He also raised the concern that if notice was required, the defendants may not settle the case.

[15] In *Chopik*, Justice Shaughnessy also found that no notice of discontinuance of the action was needed. Like *Karabogdan*, this case involved a settlement. Justice Shaughnessy was concerned that if notice was ordered, there would have to be a fairness hearing, which would increase the parties' costs.

[16] These cases, along with *Smith*, involved settlements. There's no evidence before me that Neo or Cidel have settled Kamrani-Ghadjar's claims.

[17] In *Anderson v Canada (AG)*, 2015 NLTD(G) 167, Justice Stack authorized discontinuance of the "Family Class" part of the proceeding in an institutional abuse case. Justice Stack ordered the plaintiff to provide notice to class members after trial to avoid any undue cost or delay. In doing so, he found that notice was the "norm" (at para 19). In cases where the plaintiff has settled with some defendants and discontinued against others, the court has ordered that no separate notice is needed—the notice of discontinuance can be provided with notice of the settlement hearing. See *Allott v Panasonic Corporation*, 2021 ONSC 5148, at para 26; *Cullaton v MDG Newmarket Inc.*, 2019 ONSC 6432, at para 11.

[18] In *Currie v Davol Inc.*, 2022 ONSC 6272, at para 11, Justice Perell held that notice may not be needed where the action continues against other defendants. That said, he did direct that notice be posted on Class Counsel's website. See also *Cavanaugh v. Grenville Christian College*, 2012 ONSC 2398, at para 10.

[19] In sum, these cases show that, in almost all cases, the court does order notice of some sort. That notice may be modest or delayed. But it's rare that the class members aren't told that the action is being discontinued, even if only against some defendants. It's only fair they be allowed to get legal advice before any limitation period expires.

[20] As a result, I endorse an order that notice shall be given to class members stating that the claims against Neo and Cidel have been discontinued. The notice shall be given by posting that information on Class Counsel's microsite for this class action as a "Key Development" and emailing that information to any putative class members who have contacted Class Counsel about this class action.

II. PROCEDURAL ORDERS

[21] The parties request leave to deliver factums totaling 75 pages for the leave/certification motions and 25 pages for the summary judgement motion. The *Rules of Civil Procedure* don't discuss the length of a party's factum on a motion. Under the *Notice to the Profession and Parties – Central West Region*, update effective July 1, 2024, factums for long motions are limited to 20 pages. Given the counter-motions, the

length of the record, and the complexity of the issues in dispute, it would benefit the court to have detailed written submissions.

[22] As a result, I endorse an order that the parties' respective factums shall not exceed 17,250 words and 75 pages for the leave/certification motions and 5750 words and 25 pages for the summary judgement motion.

[23] Further, the timetable order dated May 28, 2024, is amended:

Plaintiff's factums on leave/certification	February 18, 2025
Anaergia Defendants' factum on summary judgement	February 18, 2025
Plaintiff's and Defendants' responding factums	March 21, 2025
Plaintiff and Defendants' reply, if any	April 4, 2025
Hearing on leave/certification and summary judgement	April 14 to April 17, 2025

[24] The cross-examinations of the parties' affiants were finished on January 14, 2025. If the parties require a ruling on the propriety of a question objected to and not answered, they may contact my assistant to schedule a case conference. I remind the parties that rule 34.12(2) allows them to answer any questions with the objector's consent and obtain a ruling from the court before the evidence is used at a hearing.

Agarwal J

Date: January 23, 2025