

FILE/DIRECTION/ORDER

BEFORE JUSTICE PERELL

Court File No.: CV-20-642705-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DANIEL CARCILLO and GARRETT TAYLOR

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE

SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIECOMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYNORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., JOHN DOE CORP. A o/a EVERETT SILVERTIPS HOCKEY CLUB, WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., JOHN DOE CORP. B o/a SEATTLE THUNDERBIRDS, BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., JOHN DOE CORP. C o/a SPOKANE CHIEFS, TRI-CITY AMERICANS HOCKEY LLC, TOP SHELF ENTERTAINMENT, INC. and JOHN DOE CORP. D o/a TRI-CITY AMERICANS

Defendants

Proceeding under the *Class Proceedings Act, 1992*

James Sayce and Nathalie Gondek for the Plaintiffs

Michael A. Eizenga, Ranjan K. Agrawal and Maya Britgoltz for the Defendants, except for John Doe Corp. A, John Doe Corp. B, John Doe Corp. C. and John Doe Corp. D.

ORDER/DIRECTION:

[1] This is a case management conference in a proposed class action under the *Class Proceedings Act, 1992*, S.O. 1990, c. 6.

[2] The Plaintiffs, Daniel Carcillo and Garrett Taylor, ask the court to schedule a certification motion.

[3] The Defendants except for John Doe Corp. A, John Doe Corp. B, John Doe Corp. C. and John Doe Corp. D. have brought a preliminary cross-motion, and at this case conference they ask that the cross-motion be scheduled before the certification motion.

[4] The Defendants' cross-motion is for an Order:

a. striking out the statement of claim on the ground that it discloses no reasonable cause of action against them (except the defendants 64643 Ontario Inc., 211 SSHC Canada ULC, Lethbridge Hurricanes Hockey Club, Ontario Major Junior Hockey League (**OHL**), Western Hockey League (**WHL**) and Canadian Hockey League (**CHL**)) under the *Ragoonanan* principle (*i.e. Ragoonanan Estate v. Imperial Tobacco Canada Ltd.* (2000), 51 O.R. (3d) 603 (S.C.J.)),

b. staying or dismissing the action as against the Non-Ontario Defendants on the ground that this court has no jurisdiction over them regarding the subject-matter of this action, and

c. in the alternative, staying or dismissing the action as an abuse of process on the ground that it is duplicative of an overlapping action commenced by the same plaintiffs, represented by the same Class Counsel, on behalf of the same class against the same defendants in Alberta.

[5] Messrs. Carcillo and Taylor's action is against the Canadian Hockey League ("CHL"), the Ontario Major Junior Hockey League ("OHL"), Western Hockey League ("WHL"), and the Québec Major Junior Hockey League ("QHL") and 58 hockey teams associated with the CHL, the OHL, the WHL, or the QHL.

[6] Messrs. Carcillo and Taylor propose to be the Representative Plaintiffs for a class comprised of former and current players who play or played in any of the Leagues while under the age of 18.

[7] Mr. Carcillo is a former player for two OHL teams, the Sarnia Sting and the Mississauga Icedogs, and Mr. Taylor is a former player for two WHL teams, the Lethbridge Hurricanes and the Prince Albert Raiders.

[8] Represented by the same Class Counsel, Messrs. Carcillo and Taylor have brought the identical action in Alberta.

[9] In both the Ontario and the Alberta actions, Messrs. Carcillo and Taylor allege that the Defendants are liable for systemic negligence, systemic breaches of fiduciary duty, and systemic breaches of the standard form contracts between the players and the teams because of their failure to protect the putative Class Members from abuse where abuse is defined in the Statement of Claim as:

"Abuse" means, inter alia, physical and sexual assault, hazing, bullying, physical and verbal harassment, sexual harassment, forced consumption of alcohol and illicit drugs, and the use of homophobic, sexualized and /or racist slurs directed against minors playing in the Leagues, perpetrated by players, coaches, staff, servants, employees and agents of the Leagues, as further particularized herein;

[10] The Ontario class proceeding was commenced on June 18, 2020 and the Representative Plaintiffs served their motion material for certification on December 7, 2020. The Defendants served their cross-motion on December 30, 2020.

[11] In my opinion, the case at bar is not an appropriate case to schedule the cross-motion before the certification motion. The Defendants' motion can be dealt with at the same time as the certification motion either as preliminary motion or a part of the argument of the certification criteria. In this way, the Defendants can make all of their arguments why the individual team defendants should not be included as parties to the proposed class action. Those arguments bear on all of the certification criteria.

[12] I, therefore, schedule the motion and cross-motion as follows:

- a. Plaintiffs' certification record – served on December 7, 2020 [completed]
- b. Defendants' cross-motion – served on December 30, 2020 [completed]
- c. Defendants' responding certification record – June 30, 2021
- d. Plaintiffs' reply record and responding record to Defendants' cross motion – August 31, 2021
- e. Cross-examinations completed by November 1, 2021
- f. Plaintiffs' factum - November 30, 2021
- g. Defendants' factum - January 15, 2022
- h. Plaintiffs' reply factum - February 1, 2022
- i. Motion and cross-motion hearing – February 14-18, 2022

[13] The parties may on consent vary or change any of the dates save and except the date of the hearing of the motion and cross-motion.

[14] Since I am maintaining an electronic file for the court documents, I request the parties to file their documents in the normal course and also to send electronic copies to my judicial assistant. I do not want or need courtesy hard copies of the court documents.

Date: January 4, 2021

Perell, J.