

**ONTARIO SECURITIES COMMISSION
(Applicant)**

- and -

**PHEMEX LIMITED and PHEMEX TECHNOLOGY PTE. LTD.
(Respondents)**

File No. 2023-22

MOTION

(For an order striking out parts of the Affidavit of Torik Xu affirmed February 19, 2025 and Submissions on Sanctions and Costs of Phemex Limited dated February 21, 2025, under Rule 32 of the Rules of Procedure)

A. ORDER SOUGHT

The Ontario Securities Commission (the **Commission**), requests with notice, that the Tribunal make the following orders:

1. An order striking out paragraph 20 of the Affidavit of Torik Xu affirmed February 19, 2025 (the **Xu Affidavit**);
2. An order striking out the following from Exhibit “A” to the Xu Affidavit:
 - (a) in the email from Ran He to Alvin Qian dated September 7, 2023:
 - (i) the last sentence of the fourth paragraph; and
 - (ii) the third, fourth and fifth sentences of the fifth paragraph;
3. An order striking out the following from Exhibit “B” to the Xu Affidavit:
 - (a) in the email from Ran He to Alvin Qian dated June 14, 2023:
 - (i) the third paragraph and all numbered bullets below;
 - (b) all of the email from Ran He to Alvin Qian dated January 24, 2024;
 - (c) all of the email from Ran He to Alvin Qian dated February 8, 2024;

4. An order striking out the following parts of the Sanctions and Costs Submissions of Phemex Limited (**Phemex**) dated February 21, 2025 (**Phemex Submissions**):
 - (a) Paragraph 3, the first sentence, from “have always” to “profits”;
 - (b) Paragraph 33, the last two sentences;
 - (c) Paragraph 34;
 - (d) Paragraph 47, the first sentence;
 - (e) Paragraph 60, the second sentence; and
 - (f) Paragraph 61, the first sentence, from “despite” to “liability”.
5. Such further and other relief and orders as counsel may advise and the Tribunal may deem appropriate.

B. GROUNDS

The grounds for the motion are:

6. On February 20, 2025, counsel for Phemex served the Commission with a copy of the Xu Affidavit and the Phemex Submissions. On the same date, counsel for Phemex filed those materials with the Tribunal;
7. The Xu Affidavit refers to unsuccessful without prejudice settlement communications between counsel for the Respondents and counsel for the Commission in relation to the current proceeding before the Tribunal;
8. Those without prejudice communications are also referenced or otherwise described in the Phemex Submissions;
9. The Commission brings this motion seeking to strike out those parts of the Xu Affidavit and Phemex Submissions that reference or otherwise describe communications subject to settlement privilege;

10. Settlement privilege is a class privilege based on longstanding common law principles that communications made in the course of settlement negotiations are inadmissible, regardless of whether a settlement was reached;
11. Settlement privilege extends beyond communications expressly designated to be “without prejudice”. Communications made to resolve a litigious dispute, whether in existence or within contemplation, are presumptively inadmissible;
12. Settlement privilege cannot be unilaterally waived by any one party to settlement negotiations;
13. No settlement was ever reached in this case;
14. The Commission has not waived its privilege over any without prejudice settlement communications;
15. Rule 32 of the *Rules of Procedure*;

C. EVIDENCE

The Commission intends to rely on the following evidence for the motion:

16. The affidavit of Julia Ho sworn on February 26, 2025.
17. Such further and other materials as counsel may advise and the Tribunal may permit.

DATED this 26th day of February, 2025.

ONTARIO SECURITIES COMMISSION
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