

CITATION: Chu v. Parwell Investments Inc. et al, 2019 ONSC 3353
COURT FILE NO.: CV-18-604410-CP
DATE: 20190614

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED, 650
PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB) INVESTMENTS
LIMITED, ELECTRICAL SAFETY AUTHORITY, GREATWISE DEVELOPMENTS
CORPORATION and 77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceedings under the *Class Proceedings Act, 1992*

BEFORE: Justice Edward P. Belobaba

COUNSEL: *Theodore P. Charney, Tina Q. Yang, Harvey Strosberg and Sharon Strosberg* for the plaintiffs

Bruce Thomas and David S. Young for all defendants other than the
Electrical Safety Authority

Glenn Zakaib for the Electrical Safety Authority

HEARD: In writing

CONSENT CERTIFICATION

[1] On August 21, 2018, a six-alarm electrical fire severely damaged two high-rise residential towers at 650 Parliament Street, Toronto. Hundreds of tenants were displaced,

almost all sustaining personal property and related losses and, in some cases, physical injuries.

[2] Competing class actions were commenced. In a carriage decision released on February 15, 2019 I appointed Charney/Strosberg as class counsel.¹ During the course of the carriage hearing, counsel for the defendant insurers confirmed that liability would not be an issue and a contested certification motion was highly unlikely. As I noted in the carriage decision:

Defence counsel (that is, counsel for the defendants' insurers) made clear at the hearing that liability will not be an issue. Whether the fire was caused by defects in the electrical system and "electrical arcing" (SC's expert) or because of a heavy rain-storm causing water to leak into the buildings' hydro vault (LMK's expert) there is no suggestion that any degree of liability can be imposed on the tenants. The focus in this action will be on the damage sustained and the appropriate damages payment for each of the displaced tenants. In other words, a contested certification motion is unlikely and an early settlement is almost guaranteed.²

[3] Counsel on both sides have now agreed to a consent certification. To expedite matters, and because the certification of this proposed class action as against the core defendants Parwell Investments Inc. and 650 Parliament (LHB) was a certainty, I advised counsel that the certification motion could be submitted in writing. Counsel did so and I signed the proposed consent order on June 13, 2019.

Certification analysis

[4] The parties agreed that the consent "partial" certification of this proposed class action as against the core defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments on at least the core common issue (negligence) made sense in the circumstances.³ The parties left room for the possibility of further motions to the court adding other defendants or other proposed common issues as and when needed.

[5] Section 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 states that the court shall certify an action as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (c) the claims of the class members raise common issues;

¹ *Chu v. Parwell Investments Inc. et al*, 2019 ONSC 700.

² *Ibid.* at para. 21.

³ The remaining defendants and the ESA took no position on this motion.

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and (e) there is a representative plaintiff who would fairly and adequately represent the interests of the class, has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[6] Each of the requirements for certification have been satisfied. The pleadings disclose a claim in negligence. There is some basis in fact for the proposed class definition and some evidence that the negligence issue can be answered on a class-wide basis, that the class action vehicle is the preferable procedure and that the proposed representatives meet the statutory criteria noted above.

[7] The proposed class proceeding is therefore certified as a class action. The draft order signed on June 13, 2019 provides as follows:

THIS COURT ORDERS that this action is hereby certified as a class proceeding as against the defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited.

THIS COURT ORDERS that the Class is defined as:

All persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a Unit or was ordinarily resident in a Unit at the premises municipally described as 650 Parliament Street, Toronto, Ontario.

THIS COURT ORDERS that Clement Chu and Nahom Abadi are hereby appointed as the representative plaintiffs of the Class.

THIS COURT DECLARES that the cause of action certified is negligence.

THIS COURT DECLARES that the relief sought includes various declarations and general damages.

THIS COURT DECLARES that the certified common issues are:

- Did one or more of the defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited owe a duty of care to the Class in relation to the design, construction, operation, maintenance and monitoring of the Buildings, including the electrical systems? If so, which defendants?

- If the answer to question 1 is yes, did one or both of those defendants breach the standard of care expected of them in relation to the design, construction, operation, maintenance and monitoring of the Buildings, including the electrical systems? If yes, which defendants, when and how?

THIS COURT ORDERS that the form of notice of this certification order, the manner of giving notice, and all other related matters, shall be determined by further order of this Court.

THIS COURT ORDERS that this order is made without prejudice to the plaintiffs' right to move for certification as against additional defendants and/or to move for certification of additional classes and/or common issues.

THIS COURT ORDERS that there shall be no costs of this motion.

[8] I am obliged to counsel on both sides for their co-operation.



Justice Edward P. Belobaba

Date: June 14, 2019