

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ) THURSDAY, THE 2nd DAY  
 )  
JUSTICE PERELL ) OF JANUARY, 2014

BETWEEN:

BOB BRIGAITIS and CINDY RUPERT

Plaintiffs

- and -

IQT, LTD., c.o.b. as IQT SOLUTIONS, IQT CANADA, LTD. JDA PARTNERS LLC,  
IQT, INC., ALEX MORTMAN, DAVID MORTMAN,  
JOHN FELLOWS and RENAE MARSHALL

Defendants



Proceeding under the *Class Proceedings Act, 1992*

**ORDER**  
**(Motion for Certification and Rule 21 Cross Motion)**

**THIS MOTION** made by the Plaintiffs for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA"), and this motion made by the Defendants, IQT, Inc., IQT Canada, Ltd., JDA Partners LLC, David Mortman and Alex Mortman for an order pursuant to Rules 21.01(b), 21.01(3)(a), 21.01(3)(c), 21.01(3)(d) and 25, no one appearing for the Defendants IQT, Ltd. c.o.b. as IQT Solutions, John Fellows or Renae Marshall, were heard on November 25 and 26, 2013 at Toronto, Ontario.

**ON READING** the Plaintiffs' Motion Record for Certification, Plaintiffs' Supplementary Motion Record, Plaintiffs' Further Supplementary Brief of Documents, Defendants' Cross-Motion Record, Defendants' Brief of Cross Examination. Transcript and Answers to Undertakings, the facts and Books of Authorities filed by the parties and on hearing submissions of counsel,

1. **THIS COURT ORDERS** that the Plaintiffs' claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty under New York State law are struck out without leave to amend.

2. **THIS COURT ORDERS** that the Plaintiffs' claim that the Defendants intentionally interfered with economic relations is struck out, with leave to amend the Amended Statement of Claim to allege the tort of inducing breach of contract.

3. **THIS COURT ORDERS** that the Class Members who filed claims with the Ministry of Labour under section 97 of the *Employment Standards Act, 2000* (the "ESA") and did not withdraw them (the "Section 97 Group") are precluded from advancing claims for wrongful dismissal in this action. Accordingly, the Section 97 Group Class Members are excluded from common issues 1 through 8, below.

4. **THIS COURT ORDERS** that the Class Members who were assessed under section 81(1)(a) of the ESA without having made a claim (the "Assessed Group") shall, in their individual issues trials to quantify wrongful dismissal damages in this action (if required), give credit for any unpaid wage and vacation pay amounts recovered from Ministry of Labour Directors Orders to Pay/Ontario Labour Relations Board proceedings.

5. **THIS COURT ORDERS** that the balance of the Defendants' cross motion is dismissed.

6. **THIS COURT ORDERS** that this action is certified as a class proceeding pursuant to section 5 of the CPA.

7. **THIS COURT ORDERS** that the Class is defined as follows:

All persons who were employees of IQT, Ltd. whose employment in Oshawa, Ontario was terminated on July 15, 2011, exclusive of its officers and directors.

8. **THIS COURT ORDERS** that Bob Brigaitis and Cindy Rupert are appointed as representative plaintiffs for the Class.
9. **THIS COURT DECLARES** that subject to paragraph 3 above, the causes of action asserted on behalf of the Class are:
  - (a) wrongful dismissal
  - (b) conspiracy
  - (c) inducing breach of contract
  - (d) oppression remedy
  - (e) negligence
10. **THIS COURT DECLARES** that the common issues are:
  1. Was there a common contractual term of employment between IQT, Ltd. and the Class Members which required IQT, Ltd. to provide reasonable notice to the class prior to termination of employment, or in the alternative, damages for pay-in-lieu of notice?
  2. If the answer to question (1) is yes, did IQT, Ltd. breach the contract? If so, how?
  3. Do sections 61 and 64 of the ESA require IQT, Ltd. to pay pay-in-lieu of notice and/or severance pay to the Class Members?
  4. If the answer to question (3) is yes, did IQT, Ltd. breach sections 61 and 64 of the ESA? If so, how?

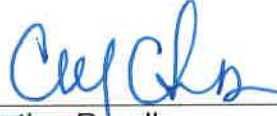
5. Do sections 11 and 38 of the ESA require IQT, Ltd. to pay outstanding wages and vacation pay to the Class Members?
6. If the answer to question (5) is yes, did IQT, Ltd. breach sections 11 and 38 of the ESA? If so, how?
7. If the answers to questions (1) to (6) are yes, are any of IQT, Canada, Ltd., IQT, Inc., and/or JDA Partners LLC, Alex Mortman, David Mortman (together, the "Mortmans"), and/or John Fellows ("Fellows") jointly and severally liable for IQT, Ltd.'s breaches of the terms of the contracts and/or sections of the ESA? If so, how and why?
8. Pursuant to section 81 of the ESA, are any or all of Mortmans and/or Fellows liable to pay outstanding wages, including vacation pay, owing to the Class up to the date of termination?
10. Did any or all of the defendants conspire to wrongfully dismiss the Class Members from IQT, Ltd.? If so, when and how?
11. Did any or all of the defendants conspire to transfer, divert, convey, assign, and/or strip IQT, Ltd.'s revenues and assets by paying its executives exorbitant salaries and expense accounts so that there were no assets available to pay Class Members compensation for pay-in-lieu of notice, severance, outstanding wages and vacation pay? If so, when and how?
12. Did any or all of Fellows and/or the Mortmans induce breach of contract between IQT, Ltd. and its employees?
13. Did IQT, Ltd. make one or more transfers of property or make a payment in favour of a creditor while insolvent contrary to s. s. 95(1)(b) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990,

c. F29, and/or section 4 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33?

14. Did Fellows and the Mortmans, or any of them, exercise their powers as directors of IQT, Ltd. in a manner that is oppressive or unfairly prejudicial or in disregard of the interests of the Class within the meaning of section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA")?
15. Were the acts or omissions of IQT, Inc. and/or IQT Canada, Ltd. oppressive or unfairly prejudicial or in disregard of the interests of the Class for the purposes of section 248 of the OBCA?
16. Did Fellows and/or the Mortmans owe a duty of care to the Class to take steps to ensure that on the cessation of IQT, Ltd.'s business, the Class Members would be terminated in accordance with the implied and actual employment contracts and/or under the ESA?
17. Did Fellows and/or the Mortmans breach the standard of care expected of them to taking steps to ensure that on the cessation of IQT, Ltd.'s business, the Class Members would be terminated in accordance with the implied and actual employment contracts and/or under the ESA? If yes, when and how?
27. Is this an appropriate case for the court to appoint a receiver-manager of IQT, Inc.?

11. **THIS COURT DIRECTS** that if any of the Defendants are found liable at the common issues trial, the losses of the Class Members may be quantified through individual issues trials.

12. **THIS COURT DIRECTS** that as part of case management the litigation plan will be revised to accord with the claims and common issues that have been certified.



Justice Perell

**C. CHIDA**

**REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE**

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À TITRE DE DOCUMENT NO.:  
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**BOB BRIGAITIS and CINDY RUPERT**

-and-

**IQT, LTD., C.O.B. AS IQT SOLUTIONS, et al.**

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

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