

CITATION: Brigaitis v. IQT, Ltd., 2014 ONSC 2180
COURT FILE NO.: 11-CV-432919CP
DATE: 20140407

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
BOB BRIGAITIS and CINDY RUPERT) *Theodore P. Charney and Andrew J. Eckart,*
) *for the Plaintiffs*
Plaintiffs)
)
- and -)
)
IQT, LTD., c.o.b. as IQT SOLUTIONS,)
IQT SOLUTIONS, IQT CANADA, LTD.,)
JDA PARTNERS LLC, IQT, INC., ALEX)
MORTMAN, DAVID MORTMAN, JOHN)
FELLOWS, RENAE MARSHALL, and)
BRAD RICHARDS)
Defendants)
)
)
Proceeding under the *Class Proceedings Act, 1992*) **HEARD:** In Writing
)

PERELL, J.

REASONS FOR JUDGMENT

[1] This is an action certified as a class proceeding under the *Class Proceedings Act, 1992*.¹ See *Brigaitis v. IQT, Ltd. c.o.b. as IQT Solutions*.² The class action should also be certified as a class action against Mr. Fellows for the reasons set out in my certification decision.

[2] The Representative Plaintiffs, Bob Brigaitis and Cindy Rupert, now seek partial default judgment against the Defendant, John Fellows, who has been noted in default. The Plaintiffs also seek approval of a Notice and a Notice Plan.

[3] I am adjourning the request for approval of the Notice and the Notice Plan to a case conference.

[4] I will also settle at the case conference the terms of the certification order and the terms of the judgment that I shall make granting the Plaintiffs a default judgment against Mr. Fellows.

¹ S.O. 1992, c. C.6.

² 2014 ONSC 7.

[5] The original default judgment motion was delivered in September 14, 2012, and supplementary materials were filed on November 12, 2012, but I adjourned the motion until after the hearing of the certification motion.

[6] Mr. Brigaitis and Ms. Rupert now seek certification of the action against Mr. Fellows and a default judgment for three claims; namely: (1) the statutory claim for outstanding wages and vacation pay pursuant to s. 81 of the *Employment Standards Act, 2000*,³ for all Class Members who did not file complaints with the Ministry of Labour; (2) the statutory claim on behalf of all Class Members who filed complaints under s. 97 of the Act for damages equivalent to outstanding wages and vacation pay for Mr. Fellows' negligence, inducing breach of contract, and oppression; (3) the claim for damages against Mr. Fellows for all Class Members equivalent to the amount of outstanding termination and severance pay under the Act for negligence, inducing breach of contract and oppression.

[7] It should be noted that the damages claims being advanced against Mr. Fellows do not include claims for common law damages in lieu of notice.

[8] As a result of being noted in default, Mr. Fellows is deemed to admit the truth of the allegations in the Amended Statement of Claim.

[9] The motion record indicates that the amount of damages for unpaid wages/vacation pay was calculated in the Office Investigation Narrative Report after a review of documents received by the Ministry of Labour from ADP Canada, IQT's payroll provider. These records indicate the start dates of employment for each Class Member.

[10] Based on the deemed to be admitted facts and the facts set out in the record for default judgment, I am satisfied that Mr. Brigaitis and Ms. Rupert should have judgment as against Mr. Fellows. The terms of the judgment shall be settled at the case conference.

[11] I state the obvious that this judgment is a judgment against Mr. Fellows only and is without prejudice to the position of the other Defendants who have defended the action.



Perell, J.

Released: April 7, 2014

³ S.O. 2000, c. 41.

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BETWEEN:

BOB BRIGAITIS and CINDY RUPERT

Plaintiff

- and -

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

Defendants

REASONS FOR JUDGMENT

Perell, J.

Released: April 7, 2014