

Case Name:

Charmley v. Toronto Hydro-Electric System Ltd.

**RE: Douglas Charmley et al., Plaintiffs/Moving Parties, and
Toronto Hydro-Electric System Ltd. and Deltera Construction
Limited, Defendants/Respondents**

[2010] O.J. No. 1320

2010 ONSC 1956

Court File No. CV-09-375391

Ontario Superior Court of Justice

G.R. Strathy J.

Heard: March 31, 2010.

Judgment: April 6, 2010.

(11 paras.)

Counsel:

Ted Charney, for the plaintiffs.

Alan Mark, for the defendant, Toronto Hydro-Electric System Ltd.

Elizabeth Bowker, for the defendant, Deltera Construction Limited.

ENDORSEMENT

1 G.R. STRATHY J.:-- This proposed class action arises out of an explosion on March 19, 2009 in the electrical room of a condominium apartment and townhouse development located at 3640-3650 Kingston Road in Toronto. As a result of the explosion, the plaintiffs claim that they, and other members of the proposed class, were evacuated from the building, and suffered personal injuries, emotional distress and damage to their property.

2 The plaintiffs have sued Toronto Hydro-Electric System Ltd. ("Toronto Hydro"), claiming that it was responsible for the hydro vault in the building, and Deltera Corporation Limited, which is alleged to be the building contractor.

3 The plaintiffs move for an order dismissing this action against Toronto Hydro. The motion is not opposed.

4 As is often the case in litigation, when this action was first commenced the plaintiffs and their lawyers did not have complete information concerning the circumstances giving rise to the events that are the subject of the claim and concerning the party or parties who might be responsible for those events. Having investigated the matter, the plaintiffs' lawyers are satisfied that Toronto Hydro has no responsibility for the events at issue in this lawsuit. They therefore seek to dismiss the action against Toronto Hydro and to continue against the remaining defendant.

5 When this motion first came before me on February 18, 2010, several objectors opposed the order sought. The affidavits in support of the motion had not been posted on counsel's website and for this reason some residents were understandably concerned that the dismissal of the suit against Toronto Hydro would prejudice their rights. I was informed that some residents of the condominium had signed a petition objecting to the release of Toronto Hydro. Counsel for the plaintiffs requested an adjournment for the purpose of informing the residents of the reasons for the proposal to dismiss the action against Toronto Hydro and to reassure them that their rights would not be prejudiced.

6 I have been informed that class counsel held an information session on March 10, 2010, which was attended by the plaintiffs, members of the condominium board and a considerable number of residents.

7 As a result of that meeting all objections to the proposed order have been withdrawn. Notice of today's hearing was delivered to each unit and has also been sent by email to approximately 90% of the unit owners. Only one person, a Ms. Nairn, appeared today for the purpose of opposing the order. She had not been able to attend the information session on March 10. After a brief recess to permit her to discuss the matter with plaintiffs' counsel, Mr. Charney, she did not pursue her objection.

8 Section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 provides that a class proceeding may be discontinued only with the approval of the court. Before granting approval, I must be satisfied that there will be no prejudice to the interests of the members of the proposed class: *Rose v. Pettie* (2004), 43 C.P.C. (5th) 183, [2004] O.J. No. 739 (S.C.J.); *Vennell v. Barnado's* (2004), 73 O.R. (3d) 13, [2004] O.J. No. 4171 (S.C.J.); *Sollen v. Pfizer Canada Inc.* (2008), 63 C.P.C. (6th) 1, [2008] O.J. No. 4787 at para. 3 (C.A.).

9 Based on the affidavits of Shauna Hoare, Senior Litigation Counsel of Toronto Hydro, and Sharon Strosberg, co-counsel for the plaintiff, and for the reasons summarized in paragraph 8 of Ms. Strosberg's affidavit, I am satisfied that the plaintiffs' claim against Toronto Hydro has no

reasonable prospect of success and that a motion for summary judgment brought by that defendant would almost certainly succeed. It is therefore reasonable for the plaintiffs to accept Toronto Hydro's offer to consent to the dismissal of the action against it, without costs. The four plaintiffs support this course of action and after full discussion with many interested parties, including the board of directors of the condominium corporation, there is no opposition from anyone. There will be no prejudice to the members of the proposed class by the dismissal of the action against Toronto Hydro.

10 An order will therefore issue dismissing the action against Toronto Hydro, without costs.

11 Counsel for the plaintiffs and for the defendant Deltera Construction Limited should contact my assistant to arrange a case conference to finalize a schedule leading to a certification motion.

G.R. STRATHY J.

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