CITATION: Nolevaux v. King and John Festival Corporation, 2013 ONSC 5451
Eman v. Bay Grenville Properties Limited, 2013 ONSC 5525
Krishna v. Bedford at Bloor Realty Inc., 2013 ONSC 5526

COURT FILES NOS.: CV-12-448294-CP
CV-12-448301-CP
CV-12-455627-CP

DATE: 20131003

SUPERIOR COURT OF JUSTICE – ONTARIO

- ***The Festival Tower Action***

RE: YVETTE NOLEVAUX and RENE NOLEVAUX / Plaintiffs / Moving Parties

AND:

KING AND JOHN FESTIVAL CORPORATION, THE DANIELS CORPORATION, KPMB DESIGN INC. KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS, KIRKOR ARCHITECTS AND PLANNERS, TORONTO INTERNATIONAL FILM FESTIVAL DEVELOPMENTS INC., TORO ALUMINUM RAILINGS INC., AND TORO GLASSWALL INC. / Defendants / Responding Parties

COUNSEL: *Harvey Strosberg, Theodore Charney and Sharon Strosberg* for the Plaintiffs

Jeremy Devereux, Michael Tamblyn and Maureen Edwards for the defendants, King and John Festival Corporation and The Daniels Corporation

Timothy Alexander for the defendant Toro Aluminum Railings Inc. and Toro Glasswall Inc.

Courtney Raphael for the defendants, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects and Kirkor Architects and Planners

- ***The Murano Towers Action***

RE: WASSEEM EMAM and LYNN ELLWOOD / Plaintiffs / Moving Parties

AND:

BAY GRENVILLE PROPERTIES LIMITED, LANTERRA DEVELOPMENTS LTD, TORO ALUMINUM RAILINGS INC., ARCHITECTSALLIANCE and H & R DEVELOPMENTS INC. / Defendants / Responding Parties

COUNSEL: *Harvey Strosberg, Theodore Charney and Sharon Strosberg* for the Plaintiffs

Emily Stock for the defendants Bay Grenville Properties Limited and Lanterra Developments Ltd.

Raymond Slattery for the defendant H&R Developments Inc.

Timothy Alexander for the defendant Toro Aluminum Railings Inc.

Helder Travassos and Megan Marrie for the defendant Architects Alliance

❖ ***The One Bedford Action***

RE: VERN KRISHNA /Plaintiff / Moving Party

AND:

BEDFORD AT BLOOR REALTY INC., LANTERRA DEVELOPMENTS LTD., H&R DEVELOPMENTS INC., MCE DEVELOPMENTS INC., TORO ALUMINUM RAILINGS INC., KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS, and PAGE + STEELE / IBI GROUP ARCHITECTS / Defendants / Responding Parties

COUNSEL: *Harvey Strosberg, Theodore Charney and Sharon Strosberg* for the Plaintiffs

Emily Stock for the defendants Bedford at Bloor Realty Inc., Lanterra Developments Ltd. and MCE Developments Inc.

Raymond Slattery and Sepideh Nassabi for the defendant H&R Developments Inc.

Timothy Alexander for the defendant Toro Aluminum Railings Inc.

Helder Travassos and Megan Marrie for the defendants Kuwabara, Payne, McKenna, Blumberg Architects and Page + Steele / IBI Group Architects

Proceedings under the *Class Proceedings Act, 1992*

***

BEFORE: Justice Edward Belobaba

HEARD: August 21, 2013

The Festival Tower, Murano Towers and One Bedford Actions

CERTIFICATION DECISIONS

[1] These are my reasons for decision in three certification motions involving falling balcony glass from condominium towers located in Toronto. The motions were heard together. I will refer to *Nolevaux* as the Festival Tower Action, to *Emam* as the Murano Towers Action and to *Krishna* as the One Bedford Action. In each of the actions, the plaintiffs claim damages because defective glass paneling had to removed and replaced from each of their balconies.

[2] The facts in the three actions are similar: Newly built condominium towers occupied by owners and renters. Glass panels suddenly dislodge and fall from several balconies. No one is injured. Balconies are sealed while the potentially defective balcony panels are replaced across the entire building. Condo unit-owners and renters lose the use of their balconies and some common areas for a significant period of time sustaining general and economic losses. One or more of them in each condominium tower commences an action against the vendor, the builder and developer and everyone involved in the design, construction and installation of the glass panelling. The actions are framed in contract, negligence and nuisance.

[3] The plaintiffs, all represented by the same counsel, seek to have their actions certified as class proceedings under the *Class Proceedings Act, 1992*[1] ("CPA"). The

[1] S.O. 1992, c. 6.

defendants in each of the three actions consent to the certification with the following caveats:

(i) The proposed class definition should be revised to read "primarily resided" rather than "ordinarily resided;"

(ii) The proposed common issue about 'partial aggregate damages' should not be certified; and

(iii) The collateral contract claim against the Daniels Corporation (in the Festival Action) should not proceed.

[4] At the conclusion of the hearing, I advised counsel that the three actions would be certified as class proceeding for written reasons that would follow shortly. These are my reasons. For ease of reference, I have set out the nine certified common issues in the Appendix.

Analysis

(1) The three caveats

[5] As already noted, the defendants in each of the three actions consent to certification subject to the three caveats just noted. I will consider each of these in turn.

(i) Class definition

[6] During the course of the hearing, the plaintiffs in each of the three actions revised their proposed class definition to read as follows:

> Those persons, excluding the defendants and their senior officers and directors, who owned, rented and/or ordinarily resided in a residential condominium unit at the premises municipally known as [*address*] during the period commencing [*relevant date*.]

[7] In my view, this definition provides an objective and workable description of the proposed class. It includes owners, renters and others, perhaps sub-lessees friends or family members, who were ordinarily resident in the condominium unit during the time period in question. The "ordinarily resided" qualifier properly excludes the overnight or weekend guest.

[8] The defendants want to replace "ordinarily resided" with "primarily resided." In my view, "primarily resided" is not an improvement over "ordinarily resided" either in

terms of objectivity or manageability, and worse, it would exclude potential class members who were otherwise affected but, strictly speaking, were neither owners nor renters and whose primary residence was elsewhere.[2]

[9] In short, the revised definition as set out above fully satisfies the concerns under s. 5(1)(b) of the CPA. I note that this very definition has been certified by this court in other cases.[3]

(ii) The "partial damages" common issue

[10] A common issue regarding aggregate assessment can be certified at this stage if it is "reasonably likely" that the three preconditions of s. 24(1) of the CPA can be satisfied.[4]

[11] The first two pre-conditions, in my view, would be satisfied. All that would remain at the conclusion of the common issues trial, if the plaintiffs were to prevail, would be the assessment of damages. Section 24(1)(c) provides that the aggregate or part of the defendant's liability to some or all of the class members can be determined if it can be done "without proof by individual class members." During the course of the hearing, the plaintiffs proposed the following as a common issue that could lead ideally (from their perspective) to a partial damages award to class members for the loss of use and enjoyment of their balcony. Note how the last seven words try to anticipate and avoid the individual-proof hurdle set out in s. 24(1)(c):

> Can damages for the loss of use and/or enjoyment of the balcony and/or the common elements be determined by using a generalized formula or some other measure that is not dependent on individual assessments?

[12] The rationale for this common issue is understandable. The plaintiffs know that class member claims for economic and out-of-pocket losses[5] will require individual

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[2] For example, Vern Krishna, the plaintiff in the One Bedford Action, has his primary residence in Ottawa. However, he and his wife stay in their One Bedford condo when they are in Toronto. The defendants' proposed use of "primarily resided" would not exclude Mr. Krishna because he would still fall within the "owner" category but it would exclude his wife even though she was also affected by the losses alleged.

[3] See for example, *Kennedy v Toronto Hydro-Electric Services Ltd.*, 2012 ONSC 2582.

[4] *Markson v. MBNA Canada Bank*, 2007 ONCA 334 at para. 44. The pre-conditions in s. 24(1) are: (a) that monetary relief is being claimed; (b) that the only questions of fact or law that would remain at the conclusion of the common issues trial is the assessment of damages; and (c) that the aggregate of part of the defendant's liability to some or all of the class members can reasonably be determined "without proof by individual class members."

[5] For example, diminution in the condo unit's rental income or sales price because of the balcony closures and repairs.

assessments. But, say the plaintiffs, the same cannot be said about the more intangible loss of use claims. It therefore makes sense for the common issues trial judge to construct a generalized formula or metric that could be used to calculate the damages award for the loss of balcony use.[6]

[13] Counsel for the plaintiffs suggest that the common issues trial judge could hear from a representative sample of the class members, perhaps only two or three, who would provide testimony about the use and value of their balcony. The judge could also hear from one or more professional real estate experts about the marginal market value of a balcony in the sale or rental of the unit. Based on this evidence, the common issues trial judge could fashion a formula that could be used by the class action administrator to determine and distribute the actual awards. The formula would probably reflect different valuations based on the condo balcony's size and floor height.

[14] In my view, this is an approach that makes a lot of sense. Unfortunately, for the purposes of common issue certification, the proposed methodology – hearing evidence from a small sample of class member claimants – has been rejected by the Court of Appeal. In *Fulawka,*[7] the Court of Appeal was asked to consider whether a random sampling of class members could provide the basis for a partial or aggregate assessment of damages. The Court concluded that the random sampling of class members was not permitted under s. 24(1)(c):

> The plaintiff's proposed procedure for arriving at a global damages figure is antithetical to the requirement in s. 24(1)(c) that the aggregate amount of the defendant's liability "can reasonably be determined without proof by individual class members." In order to give effect to Professor Drogin's proposal, the language used by the legislature would have to be "can reasonably be determined without proof by *all of the* individual class members". But the qualifying words - "all of the" - are not present in the provision. While Professor Drogin's proposed method is based on proof from a limited subsection of the class, it still impermissibly requires proof from individual class members in order to arrive at an aggregate damages figure …
>
> [A]n aggregate assessment of monetary relief may only be certified as a common issue where resolving the other certifiable common issues could

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[6] I pause here to question whether the claims about loss of access to certain common elements (such as the pool area) would be amenable to a similar generalized approach. In my view, these claims could not be determined on a building-wide basis because they appear to be much more individualized.

[7] *Fulawka v. The Bank of Nova Scotia*, [2012] O.J. No. 2885 (C.A.).

> be determinative of monetary liability and where the quantum of damages could "reasonably" be calculated without proof by individual class members. The latter condition is not satisfied here.[8]

[15] In other words, even if random sampling of a handful of class members is the very method that would be used by a trial judge in a parallel mass tort or contract action (to try to monetize the intangible "loss of use" claims), this same approach – the random sampling of the same handful of class member claimants - cannot be used by the common issues trial judge in a class action because this would be in breach of s. 24(1)(c).

[16] I frankly do not understand this interpretation of s. 24(1)(c). With respect, this is not a generous or purposive reading of the CPA. In my view, s. 24(1)(c) is legitimately concerned with situations where a large number of class members would be required to give evidence, thus defeating the very purpose of a class proceeding. In my view, s. 24(1)(c) was never intended to preclude the sensible use of random sampling involving just a handful of class members. Indeed, why would this even matter?

[17] Also, in my view, the analysis in *Fulawka*, cannot be squared with what the Court of Appeal said in *Cloud*:

> The trial judge should be able to make an aggregate assessment of the damages suffered by all class members due to the breaches found, if this can reasonably be done without proof of loss by *each* individual member. Indeed this is consistent with s. 24 of the CPA.[9]

[18] I recognize that the Court of Appeal's statement in *Cloud* was not based on a fully considered analysis of s. 24(1)(c). Nonetheless, it is interesting to note that *Cloud* interpreted s. 24(1)(c) as requiring proof of loss by "each" or every class member before aggregate damages are precluded, not "any" class member as was done in *Fulawka.*

[19] If there is any confusion about the sub-section's correct interpretation (and I for one believe there is) it will no doubt be clarified by the Court of Appeal in the months ahead. Meanwhile, I am bound by *Fulawka* because it is the more fully considered and most recent pronouncement on this point.[10] I must therefore conclude that it is not reasonably likely that the preconditions set out in s. 24(1), in particular s. 24(1)(c), can be

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[8] *Ibid.*, at paras. 137 and 139.

[9] *Cloud v. Canada (Attorney General)* (2004), 73 O.R.(3d) 401 (C.A.) at para. 70. Emphasis added.

[10] There is appellate case law stating that the most recent decision is binding: *Woolfrey v Piche,* [1958] O.J. No. 171 (C.A.) at para. 8; *Re Goyan*, [1953] O.W.N. 297 (C.A.) at para. 10.

satisfied. I therefore decline to certify the proposed "partial damages" issue because the suggested random sampling of even a handful of class members is (currently) not permitted.

(iii) The collateral contract claim against Daniels in the Festival Action

[20] The third area of dispute relates to the collateral contract claim against Daniels in the Festival Tower Action. It may be helpful to place this claim in context. In each of the actions, the breach of contract claim takes three forms:

- Against the vendor [KJFC] [Bay Grenville] and [Bedford at Bloor] for breach of the agreement of purchase and sale;

- Against the builders and developers [Daniels] [Lanterra and/or H&R] and [Lanterra, MCE and/or H&R] on the basis that in each case they and their vendor operated as a single economic unit and/or were agents of each other; and

- Against the builders and developers [Daniels] [Lanterra and/or H&R] and [Lanterra, MCE and/or H&R] on the basis that their marketing material and representations induced the purchasers to enter into the agreement of purchase and sale and they are therefore liable for breach of a collateral contract.

[21] The first two contract claims are not contested by the defendants and are set out in the Appendix as common issues nos. 3 and 4. I note that common issue no. 4 was revised after the hearing on consent to add specific language about the "single economic unit" and "agency" grounds.

[22] It is the third claim, collateral contract, that remains in dispute. However, only the Daniels defendant in the Festival Tower Action is challenging this claim. The builder and developer defendants in the Murano Towers and One Bedford Actions are content to have it certified as a common issue. Of course, whatever I decide about the collateral contract issue will apply in all three actions.

[23] Daniels makes two arguments: one, that there is no cause of action under s. 5(1)(a) of the CPA, and two, no commonality under s. 5(1)(c).

[24] First, the "no cause of action" argument. To prove the existence of a collateral contract or warranty, the plaintiff must establish: (1) clear terms of the collateral contract; (2) an intention to be contractually bound by the collateral terms; (3) that the terms do not

contradict the terms of the main contract; and (4) consideration for the collateral promise.[11]

[25] As noted by Lord Denning in *Esso Petroleum v. Mardon*,[12] an off-cited decision of the English Court of Appeal, if a representation is made in the course of dealings for a contract for the very purpose of inducing the other party to act upon it, and actually induces him to act upon it by entering into the contract, that is prima facie ground for inferring that it was intended as a warranty. It is not even necessary, said Lord Denning, to speak of it as being collateral. "Suffice it that it was intended to be acted upon and was in fact acted on."[13]

[26] Have the plaintiffs pleaded facts that, if true, support a possible cause of action in collateral contract? In my view they have. The plaintiffs have pleaded that:

- Daniels represented that it was the developer or builder of Festival Tower by placing its name and mark on marketing materials, at the presentation centre, and on the Festival Tower website; by having Daniels' executives act as spokespersons in media announcements; and by explicitly stating that Festival Tower was a Daniels' project;

- Daniels did this because it wanted potential purchasers to associate its name with the construction of Festival Tower and enter into the purchase agreements on the understanding that Daniels was bound to the terms of the agreements to the same extent as its vendor KJFC.

[27] The plaintiffs submit that each of the elements of the collateral contract cause of action has been properly pleaded: the clear term of the collateral contract was that this was a Daniels project and Daniels would stand behind it; Daniels would be bound by and would honour the terms of the purchase agreement; this commitment did not contradict the terms of that agreement; and the various Daniels' representations induced the purchasers to enter into the purchase agreement.[14]

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[11] *Fantl v Transamerica Life Canada*, 2013 ONSC 2298 at para. 155 to 56; aff'd 2013 ONCA 580.

[12] *Esso Petroleum Co. Ltd. v. Mardon* [1976] 2 All E.R. 5 (C.A.)

[13] *Ibid.*,at 13.

[14] The Statements of Claim were recently amended to plead the inducement point.

[28] It may well be challenging for the plaintiffs, on the facts herein, to establish that Daniels breached a collateral contract or warranty. But it is not plain and obvious that this cause of action is doomed to fail and has absolutely no chance of success. In my view, the plaintiffs have cleared the (very low) cause of action hurdle in s. 5(1)(a) of the CPA.

[29] Next, the "no commonality" argument. The defendants in the Festival Tower Action argue, correctly, that even if the purchasers were induced to enter into the main agreement by these collateral representations, the plaintiffs would still have to prove this and this would require individual assessments. The plaintiffs would have to show that each of the purchasers relied on one or more of these representations (by reviewing the marketing material or browsing the web-site or attending at the presentation centre or reading what was said by the Daniels' executives) and were thus induced to enter into the purchase agreement. The defendants say that the need to show individual reliance on the part of every purchaser means that the collateral contract question cannot be certified as a common issue.

[30] There is much force in this submission. However, it is important to note that both the Court of Appeal and this court have held that individual reliance can be *inferred* from the surrounding facts or circumstances.[15] Based on this reasoning, I recently certified the following as a common issue in *Dugal v Manulife Financial*: "Can each Class Member's reliance [on the alleged negligent misrepresentation] be inferred from the fact of the Class Member having acquired MFC's securities in an efficient market?"[16] I concluded in *Dugal* that this was an issue that could be answered on a common basis.

[31] Here, the plaintiffs have proposed the following as a common issue. Note that sub-parts (a), (b) and (c) track the elements of the collateral contract cause of action, ending with the "can inducement be inferred" question:

> Proposed 'collateral contract' common issue
>
> (a) During the course of the Units being sold to initial purchasers ("Purchasers") did Daniels, through the use of its marketing materials, advertising, and/or presentation centre, make one or more representations that were intended to have contractual force and were intended to induce the purchase of the Units?
>
> (b) If so, what is the substance of the representation or representations?

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[15] *NBD Bank, Canada v. Dofasco* (1999), 46 O.R. (3d) 514 (C.A.) at para. 81; *Mondor v. Fisherman*, [2001] O.J. No. 4620 (S.C.J.) at para. 65; *McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591, at para. 151.

[16] *Dugal v Manulife Financial Corporation*, 2013 ONSC 4083 at para. 93.

> (c) Can the court infer that the Purchasers were induced into purchasing a Unit by the representations?

[32] In my view, there is some basis in the evidence before me for each of these sub-parts. With respect to sub-part (c), there is at least some affidavit evidence that one or more of the prospective purchasers reviewed the marketing material and/or web-site, attended at the presentation centre or read what was said by the Daniels executives. If I am wrong in this regard, I am prepared to take judicial notice of the obvious fact that in buying an expensive condominium, one or more of the almost 400 purchasers, acting rationally, would probably have reviewed some of the marketing material or attended the presentation centre before making the purchase decision.

[33] I am therefore satisfied that collateral contract can be certified as a common issue as proposed above not only against Daniels in the Festival Tower Action, but also against the defendant builders and developers in the Murano Towers and One Bedford Actions. I have added the requisite names to common issue no. 5 as set out in the attached Appendix.

[34] Before leaving the collateral contract issue, one more item needs to be addressed. I agree with the defendants that the words "the Purchasers" in sub-part (c) must be changed to "every Purchaser." The case law is clear that there must be a rational relationship between the class and the proposed common issues;[17] that the proposed common issue must be a substantial ingredient of every class member's claim and its resolution must be necessary to the resolution of that claim;[18] and that the answer to a question raised by a common issue must be capable of extrapolation to every member of the class.[19]

[35] There is therefore no room for a judicial finding that some of the purchasers were induced by one or more of the impugned representations and some were not. If the plaintiffs wish to have the "can inducement be inferred" question certified as a common issue, then this issue must apply to all of the purchasers, or "every Purchaser." I have revised the collateral contract issue accordingly. Also, for purposes of consistency, I have revised the third sentence in the common issue so that it reads "one or more of the representations" and thus tracks the language in the first sentence: see the certified version of common issue no. 5 in the attached Appendix.

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[17] *Cloud*, *supra* note 8, at para. 48.

[18] *Hollick v. Toronto (City)*, [2001] 3 SCR 158 at para. 18.

[19] *McKenna, supra,* note 13, at para. 125(g), referring to *Western Canadian Shopping Centres v. Dutton,* [2001] 2 S.C.R. 534, at para. 40.

[36] I also note that the plaintiffs have accepted Daniels' submission and have removed the words "and warranted by Daniels" from the definition of the word "Contract" in the definitions section as set out in their motion material.

Certification generally

[37] Even though these certification motions proceeded largely on consent, the court must still determine that the preconditions for certification as out in the CPA have been satisfied. I have no difficulty coming to this conclusion.

[38] Under s. 5(1) of the CPA, the court is required to certify a proceeding as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims of the class members raise common issues of fact or law; (d) a class proceeding would be the preferable procedure; and (e) there is a representative plaintiff who would adequately represent the interests of the class without conflict of interest and who has produced a workable litigation plan.

[39] Here, the causes of action in contract, negligence and nuisance are all properly pleaded and clear the (very low) cause of action hurdle. There is an identifiable class of two or more persons that would be represented by the representative plaintiff. There is some basis in fact for the proposed common issues, both the ones that have been consented to[20] and the ones that were contested, as discussed above. A class action on the facts herein is the most preferable procedure for reasons of both access to justice and judicial economy. And, in each of the three actions, the proposed representative plaintiffs will fairly and adequately represent the interests of the class, they have no interests that conflict with any of the other class members, and they have filed litigation plans that provide a reasonable framework for the issues that are expected to arise as the case proceeds.

[40] In sum, the five pre-conditions set out in s. 5(1) of the CPA have been satisfied.

Disposition

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[20] I note that in other class proceedings involving broadly sustained losses in apartment and condominium building complexes, this court has approved common issues similar to issues 1 to 3 and 6 to 7 herein: see *Charmley v. Deltera Construction Limited*, 2010 ONSC 7153, at paras. 23-26; *Kennedy v. Toronto Hydro-Electric System Ltd.* (April 23, 2009), Toronto Court File No. CV-08-361906 (S.C.J.) Order at para. 7; *Gale v. Norquay Developments Ltd.* (May 3, 2012), Windsor Court File No. CV11-16524 (S.C.J.) Order at para. 7; and *Durling v. Sunrise Propane Energy Group Inc.*, 2012 ONSC 4196, at para. 171. I also note that the common issues nos. 8 and 9, dealing with pre-judgment and post-judgment interest, and with administration and distribution costs, have been routinely approved as well: see *Cassano v The Toronto Dominion Bank* (2007) 87 O.R. (3d) 401 (C.A.) at para. 72.

[41] The motions for the certification of the Festival Tower, Murano Towers and One Bedford Actions are granted as described above.

[42] Yvette Nolevaux, Rene Nolevaux, and Debra Elayne Williams are appointed representative plaintiffs in the Festival Tower Action; Wasseem Emam and Lynn Ellwood in the Murano Towers Action; and Vern Krishna in the One Bedford Action.

[43] The certified common issues are attached in the Appendix. Counsel will understand that these common issues are intended to apply, *mutatis mutandis*, to all three actions.

[44] Counsel are directed to prepare an order in the form contemplated by s. 8 of the CPA. If any questions arise in this regard, please let me know.

[45] A word about costs. There were three contested issues: class definition, partial aggregate damages, and collateral contract. The plaintiffs prevailed on the first and third and the defendants prevailed on the second. However, the defendants were also successful in (1) adding a new common issue no. 4 dealing more specifically with the "one economic unit" and "agency" arguments; (2) including the words "every Purchaser" in new common issue no. 5; and (3) deleting the words "warranted by Daniels" in the definitions section.

[46] In my view, overall success on these motions was almost evenly divided and thus no costs will be awarded.

[47] I am obliged to counsel for their assistance.

Belobaba J.

Date: October 3, 2013

Appendix

The Certified Common Issues

1. Did any or all of the defendants owe a duty of care to the Class Members in relation to the design, construction and installation of the Glass Panelling?

2. Did any or all of the defendants breach the standard of care expected of them in relation to the design, construction and installation of the Glass Paneling. If yes, which defendants, when and how?

3. Did [KJFC] [Bay Grenville] [Bedford at Bloor] breach the Contract with Class Members in relation to the design, construction and installation of the Glass Paneling on the Balconies? If yes, when and how was the Contract breached?

4. If [KJFC] [Bay Grenville] [Bedford at Bloor] breached the Contract with Class Members who purchased Units from [KJFC] [Bay Grenville] [Bedford at Bloor] in relation to the design, construction and installation of the Glass Paneling on the balconies, is [Daniels] [Lanterra and/or H&R] [Lanterra, MCE and/or H&R] liable with [KJFC] [Bay Grenville] [Bedford at Bloor] for that breach on the basis that [KJFC and Daniels] [Bay Grenville and Lanterra and/or H&R] [Bedford at Bloor and Lanterra, MCE and/or H&R] are one economic unit or single group enterprise, and/or each of [KJFC and Daniels] [Bay Grenville and Lanterra and/or H&R] [Bedford at Bloor and Lanterra, MCE and/or H&R] acted as agent of the other?

5. During the course of the Units being sold to initial purchasers ("Purchasers") did [Daniels] [Lanterra and/or H&R] [Lanterra, MCE and/or H&R] through the use of its marketing materials, advertising, and/or a presentation centre, make one or more representations that were intended to have contractual force and induce the purchase of Units? If so, what is the substance of the representation or representations? Can the court infer that every Purchaser was induced into a purchasing a Unit by one or more of the representations?

6. If the answers to any of questions 1 through 3 are "yes", did the breach or breaches cause or contribute to the Falling Glass?

7. If the answers to any of questions 1 through 3 are "yes", what degree of fault should be assigned to each defendant?

8. Should the defendants pay prejudgment and post-judgment interest, and at what annual interest rate?

9. Should the defendants pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

***