

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
 **ETIENNE DE MUELENAERE** )  
 )  
 Plaintiff ) *Harvey T. Strosberg, K.C.. for the Plaintiff*  
 )  
 - and - )  
 )  
 **GREAT GULF HOMES LIMITED,** )  
 **GREAT GULF (JARVIS-CHARLES)** )  
 **LTD. and JARVIS-CHARLES G.P. INC.** )  
 )  
 Defendants )  
 )  
 Proceedings under the *Class Proceedings* ) **HEARD:** In writing  
 *Act, 1992* )

**PERELL, J.**

**REASONS FOR DECISION**

[1] This a motion pursuant to the *Class Proceedings Act, 1992*,<sup>1</sup> for a consent certification for settlement purposes. It is also a motion to add Jonathan Guy as a co-Plaintiff.

[2] Etienne de Muelenaere is the Plaintiff in a proposed class action. He sues Great Gulf Homes Limited, Great Gulf (Jarvis-Charles) Ltd. (“Great Gulf (JC)”) and Jarvis-Charles G.P. Inc. (collectively “Great Gulf Homes”).

[1] Great Gulf Homes built a 44-storey residential condominium in Toronto with 417 residential units. Mr. de Muelenaere owns a resale unit in the condominium complex.

[2] One of the features of the residences at the condominium complex when the units were originally sold by the developer was a pressure-balanced valve for the bathtubs and the showers, but Mr. de Muelenaere alleges that non-pressure-balanced valves were installed with the consequence of unpredictable temperature fluctuations including a serious risk of harm.

[3] On September 18, 2014, Mr. de Muelenaere commenced a proposed class action against Great Gulf Homes. The proposed definition of the Class is as follows:

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<sup>1</sup> S.O. 1992, c. 6.

“Class” and “Class Members” means during the Class Period, all persons who did not sign a release and who own, owned, rent, rented, was ordinarily resident in a Unit and their family members and their guests, excluding the defendants and their senior officers and directors.

The “Class Period” means the period of occupation of the Units on or after November 8, 2010 until the September 5, 2023.

[4] Mr. de Muelenaere advanced causes of action in contract and in negligence.

[5] Mr. de Muelenaere proposes the following common issues:

a. Did any of all of the defendants owe a duty of care to the Class Members in relation to the monitoring, design, installation and supply of the Non Pressure Balanced Valves in the bathtubs and/or showers in the bathrooms of each Unit in the Building?

b. Did any of all of the defendants breach the standard of care expected of them in relation to the monitoring, design, installation and supply of the Non Pressure Balanced Valves in the bathtubs and/or showers in the bathrooms of each Unit in the Building?

c. Did the defendant Great Gulf (JC) breach the contract with Class Members in relation to the monitoring, design, installation and supply of the Non Pressure Balanced Valves in the bathtubs and/or showers in the bathrooms of each Unit in the Building?

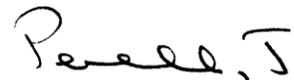
d. if Great Gulf (JC) breached the contract with Class Members who purchased Units from Great Gulf (JC) in relation to the Non Pressure Balanced Valves in the bathtubs and/or showers in the bathrooms of each Unit in the Building, are the other defendants liable with Great Gulf (JC) for that breach on the basis that they are one economic unit or single group enterprise, and/or each of them acted as agents of the other?

[6] On December 2, 2021, the date before the certification motion was scheduled to be argued, the parties settled the certification motion for settlement purposes. The settlement agreement provides for a settlement fund of \$1.0 million and a claims program to be administered by a Claims Administrator.

[7] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court shall certify a proceeding as a class proceeding if: (1) the pleadings disclose a cause of action; (2) there is an identifiable class; (3) the claims or defences of the class members raise common issues of fact or law; (4) a class proceeding would be the preferable procedure; and (5) there is a representative plaintiff or defendant who would adequately represent the interests of the class without conflict of interest and there is a workable litigation plan.

[8] I am satisfied that all the criteria for certification are satisfied in the immediate case.

[9] Order to go as requested.



Perell, J.

**CITATION:** de Muelenaere v. Great Gulf Homes Limited, 2023 ONSC 6763  
**COURT FILE NO.:** CV-14-51244700CP  
**DATE:** 20231130

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**BETWEEN:**

**ETIENNE DE MUELENAERE**

Plaintiff

- and -

**GREAT GULF HOMES LIMITED, GREAT GULF  
(JARVIS-CHARLES) LTD. and JARVIS-  
CHARLES G.P. INC.**

Defendants

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**REASONS FOR DECISION**

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**Released:** November 30, 2023