

Feb. 17, 2015

AMENDED THIS PURSUANT TO
MODIFIÉ CE CONFORMÉMENT A

RULE/LA RÉGLE 26.02

THE ORDER OF JUSTICE DEBESABA
L'ORDONNANCE DU

DATED / FAIT LE February 17, 2015

Court File No. CV-12-455627CP00

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

VERN KRISHNA and WAYNE GOODMAN

Plaintiffs

and

BEDFORD AT BLOOR REALTY INC., LANTERRA DEVELOPMENTS LTD.,
H&R DEVELOPMENTS INC., MCE DEVELOPMENTS INC, and
TORO ALUMINUM RAILINGS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: *June 7, 2012*

Issued by: *S. DESOUZA*

Registrar

Address of Court Office:
393 University Ave. - 10th Fl.
Toronto, Ontario
M5G 1E6

TO:
BEDFORD AT BLOOR REALTY INC.
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Toronto, ON M3K 1N4

AND TO:
LANTERRA DEVELOPMENTS LTD
3625 Dufferin St., Suite 230
Toronto, ON M3K 1N4

AND TO:
H&R DEVELOPMENTS INC.
3625 Dufferin St., Suite 500 Toronto,
ON M3K 1N4

AND TO:
MCE DEVELOPMENTS INC.
99 Sante Drive
Concord, ON L4K 3C4

AND TO:
TORO ALUMINUM RAILINGS INC.
330 Applewood Crescent
Concord, Ontario L4K 4V2

CLAIM

DEFINITIONS

1. The following definitions apply for the purposes of this statement of claim:
 - (a) “**Balcony**” and “**Balconies**” mean the outdoor exclusive use common elements for the **Units**;
 - (b) “**Bedford at Bloor**” means Bedford at Bloor Realty Inc.;
 - (c) “**Builders**” means **Lanterra, Bedford at Bloor, MCE** and/or **H&R**;
 - (d) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) “**Class**” and “**Class Members**” means 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 One Bedford Road, in the City of Toronto during the period commencing on August 13, 2011 to and including September 30, 2012;
 - (f) “**Class Period**” means the period commencing on and including August 13, 2011 to and including September 30, 2012;
 - (g) “*Condominium Act*” means *Condominium Act, 1998*, S.O. 1998, c. 19;
 - (h) “**Condominium Corporation**” means Toronto Standard Condominium Corporation No. 2139;
 - (i) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
 - (j) “**Falling Glass**” means **Glass Panelling** which was installed in balcony guards on **Balconies** at **One Bedford** that shattered during the **Class Period**;
 - (k) “**Glass Panelling**” means the tempered glass installed in the balcony guards for each **Balcony** at **One Bedford**;
 - (l) “**H&R**” means H&R Developments Inc.;
 - (m) “**Lanterra**” means Lanterra Developments Ltd.;

- (n) “**MCE**” means MCE Developments Inc.;
- (o) “*New Home Warranties Plan Act*” means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31;
- (p) “**One Bedford**” means the condominium development located at 1 Bedford Road in the City of Toronto, Ontario;
- (q) “*Ontario Building Code*” means the *Building Code Act, 1992*, S.O. 1992, c. 23 and O. Reg. 350/06;
- (r) “**Toro**” means Toro Aluminum Railings Inc.;
- (s) “**Unit**” or “**Units**” means a residential condominium unit, including its **Balcony**, at **One Bedford**;
- (t) “**Vern**” means Vern Krishna; and
- (u) “**Wayne**” means Wayne Goodman.

RELIEF SOUGHT

2. Vern and Wayne claim on their own behalf, and on behalf of other Class Members:
 - (a) an order certifying this action as a class proceeding and appointing them as the representative plaintiffs for the Class;
 - (b) a declaration that the Builders were negligent in monitoring the design, installation, and supply of the Glass Panelling and are liable in damages to the Class;
 - (c) a declaration that Toro was negligent in the installation, supply and selection of the Glass Panelling and is liable in damages to the Class;
 - (d) a declaration that the Bedford at Bloor was in breach of contract and that the builders are liable in damages to Class Members who purchased Units from Bedford at Bloor for that breach of contract;
 - (e) a declaration that Bedford at Bloor, MCE, H&R and Lanterra form one economic unit or one common enterprise and each is therefore vicariously liable for the other’s acts and omissions;

- (f) general damages in the amount of \$15,000,000.00, or such other sum as this Honourable Court finds appropriate;
- (g) special damages and the costs of administering the plan of distribution of the recovery of this action in the amount of \$4,000,000.00, or such other sum as this Honourable Court finds appropriate;
- (h) such further and other special damages as may be incurred from the date hereof until trial, or final disposition of this action, particulars of which will ultimately be furnished to the defendants;
- (i) an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (j) prejudgment and postjudgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (k) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under ss. 24 or 25 of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*; and
- (l) such further and other relief as to this Honourable Court seems just.

OVERVIEW OF THIS ACTION

3. One Bedford is a real estate development in the City of Toronto which consists of a 34 storey residential condominium. One Bedford contains 254 residential units, 7 commercial units, 171 locker units, 202 bicycle/locker units and 10 sign units, among other things.
4. In or around August 13, 2011, Glass Panelling fell from a Balcony on One Bedford onto the street below the Balcony. On or about August 16, 2011, another similar incident occurred wherein Falling Glass fell onto the street below.

5. As a result of the Falling Glass, employees of one or more of the defendants entered the plaintiffs and other Class Members' Units and locked the Balconies, thereby preventing the Class Members from accessing their Balconies for a period of time. Class Members have thereby suffered from the loss of the use of their Balconies, loss of enjoyment of their Units, disruption of their privacy, delay in the resale of their Units, diminution in the value of their Units, and diminution of their rental income.

PARTIES

The Plaintiffs

6. Vern purchased Unit 423 at One Bedford directly from Bedford at Bloor. He took possession of the Unit in or about September or October 2010 and the transaction closed in or about May 2011.
7. Wayne has been a tenant of Unit 204 at One Bedford since May 1, 2011. Wayne ended his tenancy on January 7, 2013

The Defendants

8. Bedford at Bloor is a corporation incorporated under the laws of Ontario with its head office located in the City of Toronto. Bedford at Bloor carries on the business of, *inter alia*, developing residential and commercial real estate. At all material times, Bedford at Bloor was the owner, developer and construction manager of One Bedford. It is vicariously liable for the acts and omissions of its employees, agents and servants.

9. On March 29, 2011, Bedford at Bloor registered a Declaration and Description, thereby naming itself the “declarant” within the meaning of the *Condominium Act*. At all material times, Bedford at Bloor marketed and sold the Units in One Bedford.
10. At all material times Bedford at Bloor assisted in the development and/or construction of One Bedford, including its Balconies. It also selected the trade contractors, and supervised and controlled their access to, and their construction of, the Balconies.
11. Lanterra is a corporation incorporated under the laws of Ontario with its head office located in the City of Toronto. Lanterra carries on the business of, *inter alia*, developing and constructing residential and commercial real estate. At all material times, Lanterra was the owner, developer and construction manager of the development of One Bedford.
12. At all material times, Lanterra assisted in the development and/or construction of One Bedford, including its Balconies. It also selected the trade contractors, and supervised and controlled their access to, and their construction of, the Balconies. Lanterra is vicariously liable for the acts and omissions of its employees, agents and servants.
13. MCE is a corporation incorporated under the laws of Ontario with its head office located in the City of Toronto. MCE carries on the business of, *inter alia*, developing and constructing residential and commercial real estate. At all material times, MCE was the owner, developer and construction manager of the development of One Bedford.
14. At all material times, MCE assisted in the development and/or construction of One Bedford, including its Balconies. It also selected the trade contractors, and supervised

and controlled their access to, and their construction of, the Balconies. MCE is vicariously liable for the acts and omissions of its employees, agents, and servants.

15. H&R is a general partnership under the laws of Ontario and with its head office located in the City of Toronto. H&R is in the business of, *inter alia*, constructing and developing commercial and residential buildings. At all material times, H&R was the owner, developer and construction manager of the development of One Bedford.
16. At all material times, H&R assisted in the development and/or construction of One Bedford, including its Balconies. It also selected the trade contractors, and supervised and controlled their access to, and their construction of, the Balconies. H&R is vicariously liable for the acts and omissions of its employees, agents and servants.
17. Toro is a corporation incorporated under the laws of Ontario with head office located in the community of Concord, Ontario. Toro is in the business of supplying and installing balcony guard railings in condominiums, including the balcony guard railings and Glass Panelling at One Bedford. Toro is vicariously liable for the acts and omissions of its employees, agents and servants.
18. At all material times, Toro was the trade contractor hired by one or all of the Builders and supplied and installed the Glass Panelling and guard railings on the Balconies at One Bedford.

FACTS SUPPORTING CLASS MEMBERS' CLAIMS AGAINST THE DEFENDANTS

19. In or around 2004, Bedford at Bloor, Lanterra, MCE and/or H&R proposed to build a condominium project on or around 1 Bedford Road in the City of Toronto.
20. The Builders began excavation for the construction of One Bedford in or around 2007.
21. In or around that time, Bedford at Bloor, Lanterra, MCE and/or H&R began to promote and market the sale of Units in One Bedford to the general public. In doing so, the names of these four defendants were placed on marketing materials.
22. At some point in time during the construction of One Bedford, Bedford at Bloor, Lanterra, MCE and/or H&R entered into an agreement with Toro in which Toro agreed to furnish materials and perform the work with respect to the construction of the Balconies.
23. Alternatively, Bedford at Bloor entered into the agreement with Toro as agent for Lanterra, MCE and H&R, who expressly authorized Bedford and Bloor to do so.
24. Toro also supplied and installed the balcony guard railings and Glass Panelling in the Murano Towers condominium complex located at 38 Grenville Street and 37 Grosvenor Street and in the Festival Tower condominium complex located at 80 John Street in Toronto, Ontario, which shattered and fell to the street below in April 2010 and thereafter.
25. On or around August 13, 2011, Glass Panelling installed on One Bedford fell onto the street below the Balcony. On or about August 16, 2011, two other similar incidents occurred wherein Glass Panelling fell onto the street.

26. In or around August and September of 2011, employees of one or more of the defendants entered Vern's and Wayne's Units and the Units of all Class Members and sealed the sliding doors to the Balconies at One Bedford such that they could not be opened from the inside of the Units. Notices were posted on the Balcony doors of every Unit prohibiting the opening of the Balcony doors or use of the Balcony.
27. Employees of one or more of the defendants also sealed off access to the external courtyard facilities such that the plaintiffs and the other Class Members have not been able to access this common area in order to use the barbeque facilities.
28. In or around August and September 2011, employees of one or more of the defendants removed each piece of Glass Panelling from every Balcony in One Bedford.
29. As a result of the Falling Glass and the subsequent removal of the Glass Panelling from the Balconies, Vern, Wayne and all other members of the Class have not been able to access their Balconies or the common outdoor courtyard facilities, and have thereby suffered from a loss of enjoyment.

FACTS REGARDING THE BUILDERS

30. In developing, marketing and selling Units at One Bedford, Bedford at Bloor, H&R, MCE and Lanterra developed the project jointly, marketed it jointly and sold the Units jointly, albeit Bedford at Bloor was selected by these defendants to be their agent when entering into purchase agreements with Unit purchasers.

31. In the alternative, to the extent that any of these defendants did not personally develop or market the project, or sell the Units, they remain jointly and severally liable to Vern and to the Class because the Builders were operated together as one economic unit or as a single group enterprise such that it would be unjust not to disregard the separate corporate identities of the corporations and this is an appropriate case for the Court to have regard to the larger overall corporate entity. In particular:

- (a) Each of Bedford at Bloor, MCE, H&R and Lanterra is a parent or subsidiary of the other or is an affiliate of the other;
- (b) Bedford at Bloor is the agent of Lanterra, MCE and/or H&R because the executives of those companies managed, oversaw and/or directed all business activities of Bedford at Bloor and were required to authorize all significant business activities of Bedford at Bloor;
- (c) Lanterra, MCE and/or H&R knew that consumers and Unit purchasers were aware or were informed through sales agents and marketing materials that Bedford at Bloor was acting in its capacity as the agent of Lanterra, MCE and/or H&R with respect to marketing, developing and selling the units.
- (d) Bedford at Bloor, MCE and Lanterra have common directors and officers;
- (e) H&R, Bedford at Bloor and Lanterra have common offices and employees;
- (f) The acts and omissions set out in the claim were done by Bedford at Bloor in pursuit of their common enterprise, namely the development of One Bedford;
- (g) Lanterra, H&R, MCE and Bedford at Bloor carry on business jointly and are operated as one economic unit or one economic enterprise;
- (h) Lanterra, H&R, and/or MCE financed One Bedford and guaranteed the loan facility;
- (i) All four companies held themselves out to consumers, through sales agents and marketing materials, as operating as one economic unit; and

- (j) All four companies have organized their business affairs so as to insulate the Builders from a judgment by diluting all assets and revenues from Bedford at Bloor upon completion of One Bedford and the expiry of the warranty period.
32. While one company entered into contracts with trade contractors and purchasers of Units, Bedford at Bloor, H&R, MCE and Lanterra are collectively liable to the plaintiffs and other Class Members because of their operation as one economic unit or a single group enterprise. Each company is vicariously liable for the acts of omissions of the other.

FACTS REGARDING THE PLAINTIFFS' INDIVIDUAL CIRCUMSTANCES

Vern

33. In or about May 2011, Vern purchased Unit 423 in One Bedford from Bedford at Bloor.
34. In or about August and September 2011, employees of one of the defendants entered Vern's Unit, removed the Glass Panelling from the Balcony, and sealed the Balcony doors such that they could not be opened from the inside.
35. As a result of sealing access to the balcony, Vern sustained a complete loss of use and enjoyment of his outdoor living space. Vern also sustained a loss of enjoyment of his indoor living space because the sealed patio door meant that his major source of fresh air was eliminated.

Wayne

36. On April 25, 2011, Wayne entered into a lease agreement with Peter and Vasilias Panagakos to rent Unit 204 at One Bedford for a term of 7 months beginning on May 1, 2011.
37. In or about August and September 2011, employees of one of the defendants entered Wayne's Unit, removed the Glass Panelling from the Balcony, and sealed the Balcony doors such that they could not be opened from the inside. Wayne was unable to access his Balcony until in or about July 2011.
38. As a result of sealing access to the balcony, Wayne sustained a complete loss of use and enjoyment of his outdoor living space. Wayne also sustained a loss of enjoyment of his indoor living space because the sealed patio door meant that his major source of fresh air was eliminated.

CAUSES OF ACTION

Breach of Contract

39. Vern and other Class Members who purchased Units directly from Bedford at Bloor entered into Agreements of Purchase and Sale (the "Contracts").
40. The Contracts contained the following terms:
 - (a) That the Units and the common areas in the One Bedford would be completed in the manner specified in the plans and specifications for One Bedford filed with the City of Toronto and contained in the Description; and

- (b) That the Units and the common areas in One Bedford would be completed in a good and workmanlike manner in accordance with the *Ontario Building Code* and good construction practice.
41. Section 13 of the *New Homes Warranties Plan Act* is incorporated into the terms of the Contract. As a result, Bedford at Bloor warranted to Vern and the Class Members who purchased Units directly from Bedford at Bloor that the Units and the common elements in the One Bedford were:
- (a) constructed in a workmanlike manner and free from defects in material;
 - (b) fit for habitation;
 - (c) constructed in accordance with the *Ontario Building Code*; and
 - (d) free from structural defects.
42. All Class Members who purchased Units from Bedford at Bloor entered into Contracts with Bedford at Bloor on similar terms.
43. Lanterra, MCE and H&R also warranted that they were developers or builders of One Bedford by placing their marks, "Lanterra", "H&R", and "MCE" on the marketing material; by displaying them at the presentation centre; by placing them on the web site for the One Bedford development; by having Lanterra and MCE executives and H&R partners act as spokespersons in media announcements; and by stating the project was a Lanterra, MCE, and/or a H&R project.
44. Lanterra, MCE and H&R knew that purchasers would associate the names Lanterra, MCE and H&R with the construction of One Bedford and intended that prospective

purchasers do so. Lanterra, MCE and H&R's representations that they were the developers or builders therefore constitutes a collateral contract whereby Lanterra, MCE, and H&R agreed to be bound by all of the terms of the Contracts, to the same extent as Bedford at Bloor.

45. All Class Members who purchased Units from Bedford at Bloor were induced by Lanterra, MCE, and H&R's marks and representations, as described at paragraph 43, to enter into the Contract.
46. The Glass Panelling, and/or the balcony railing guards at One Bedford are deficient in that they were manufactured, designed, supplied, and/or installed in an improper and defective manner by the Builders and/or Toro contrary to the terms of the Contract as set out in paragraphs 40 and 41 of this Claim.
47. Vern pleads on his own behalf, and on the behalf of each Class Member who purchased Units directly from Bedford at Bloor, that as a result the aforesaid breaches of contract and statutory warranties, Bedford at Bloor, Lanterra, MCE and H&R are liable to them in damages.

Negligence of the Builders

48. The Builders owed a duty of care to the plaintiffs and other Class Members to carefully monitor the construction of the Balconies and to protect against incidents of Falling Glass.

49. The circumstances of the Builders being in the business of developing and constructing condominiums for sale to the plaintiffs and other Class Members are such that they were under an obligation to be mindful of the plaintiffs and other Class Members when constructing One Bedford.

50. The Builders knew or ought to have known that if the Balconies were not constructed in a manner whereby the Glass Panelling was secure and the composite glass free from defects which could cause the glass to shatter, it was likely that Falling Glass would cause damage to the Class Members' property, restrict their access to the Balconies and common areas, decrease their enjoyment of the Units, delay in the resale of the Units, diminish the value of the Units, and decrease rental income generated from the rent of Units.

51. There was a sufficient degree of proximity between the plaintiffs and other Class Members and the Builders to establish a duty of care because:
 - (a) The Builders entered into a contract or a collateral contract with purchasers of Units;
 - (b) It was reasonable for the plaintiffs and other Class Members to expect that the Builders had implemented adequate safeguards to ensure that the Balconies were constructed in a manner that they would be fit for habitation;
 - (c) The nature of the Builders' business, the construction and development of residential and commercial real estate, had a direct causal connection to the incidents of Falling Glass;
 - (d) The plaintiffs and other Class Members were vulnerable to any failure on the part of the Builders to ensure the safety and quality of the Balconies, as they had no way of ensuring sufficient inspection and supervision of the materials were taken, and no way of protecting themselves if sufficient measures were not taken; and

(e) Lanterra, MCE and H&R warranted that they were Builders.

52. The Builders breached their duty of care to the plaintiffs and to the Class Members, as particularized below:

- (a) they failed to complete the construction in accordance with the *Ontario Building Code*;
- (b) they failed to complete the construction in a good and workmanlike manner in accordance with good construction practice;
- (c) they failed to complete the construction in accordance with the plans and specifications for One Bedford filed with the City of Toronto and contained in the Description;
- (d) they employed inferior or defective materials used in the construction;
- (e) they improperly or carelessly installed the materials used in the construction;
- (f) they failed to properly supervise and inspect work done by contractors, sub-trades, and employees;
- (g) they failed to properly inspect the construction work on an on-going basis and ensure that the construction of One Bedford was done in accordance with the *Ontario Building Code*, good construction practice and the plans and specifications for One Bedford filed with the City of Toronto and contained in the Description;
- (h) they failed to provide adequate specifications to Toro for the composite of glass to be used as Glass Panelling;
- (i) they purchased, or allowed to be purchased, glass from China to be used as Glass Panelling based on its low price and without regard to whether it was fit for its intended purpose;
- (j) they failed to require adequate quality controls and testing of the glass imported from China before installing the Glass Panelling; and
- (k) they failed to specify that Toro use laminated glass instead of tempered glass.

Negligence of Toro

53. Toro owed a duty of care to the plaintiffs and other Class Members to carefully supply and install the Glass Panelling and balcony guard railings such that there would be no incidents of Falling Glass.
54. The circumstances of Toro being in the business of supplying and installing balcony guard railings in condominiums are such that they were under an obligation to be mindful of the plaintiffs and other Class Members when supplying and installing the guard railings and Glass Panelling on the Balconies.
55. Toro knew or ought to have known that if the installed Glass Panelling was of inadequate composite, or if the Balconies were not constructed in a manner whereby the Glass Panelling was secure, it was likely that Falling Glass would cause damage to the Class Members' property, restrict their access to the Balconies and common areas, decrease their enjoyment of the Units, delay in the resale of the Units, diminish the value of the Units, and decrease rental income generated from the rent of Units.
56. There was a sufficient degree of proximity between the plaintiffs and other Class Members and Toro to establish a duty of care because:
 - (a) It was reasonable for the plaintiffs and other Class Members to expect that Toro had implemented adequate safeguards to ensure that the Balconies were constructed in a manner where by Glass Panelling would not shatter and fall;
 - (b) The nature of Toro's business, the supply and installation of balcony guard railings in condominiums, had a direct causal connection to the incidents of Falling Glass;

- (c) The plaintiffs and other Class Members were vulnerable to any failure on the part of Toro to ensure the safety and quality of the Balconies, as they had no way of ensuring sufficient inspection and supervision of the materials were taken, and no way of protecting themselves if sufficient measures were not taken.

57. Toro breached its duty of care to the plaintiffs and to the Class Members, as particularized below:

- (a) they failed to complete the construction in accordance with the *Ontario Building Code*;
- (b) they failed to complete the construction in a good and workmanlike manner in accordance with good construction practice;
- (c) they failed to complete the construction in accordance with the plans and specifications for One Bedford filed with the City of Toronto and contained in the Description;
- (d) they employed inferior or defective materials used in the construction;
- (e) they improperly or carelessly installed the materials used in the construction;
- (f) they failed to properly supervise and inspect work done by contractors, sub-trades, and employees;
- (g) they failed to properly inspect the construction work on an on-going basis and ensure that the construction of One Bedford was done in accordance with the *Ontario Building Code*, good construction practice and the plans and specifications for One Bedford filed with the City of Toronto and contained in the Description;
- (h) they purchased, or allowed to be purchased, glass from China to be used as Glass Panelling based on its low price and without regard to whether it was fit for its intended purpose;
- (i) they failed to inspect the Glass Panelling imported from China and test it for defects prior to installing it; and
- (j) they failed to determine whether the company who manufactured the glass used in the Glass Panelling had adequate quality control measures to ensure consistency in the composite of the Glass Panelling.

DAMAGES

58. The plaintiffs plead that by virtue of the defendants' breach of contract and negligence outlined above, the defendants are jointly and severally liable in damages to them and to all Class Members for:

- (a) the loss of access to the Balconies;
- (b) the loss of access to some common areas;
- (c) the loss of enjoyment of their Units; and
- (d) the disruption of their privacy due to one or more of the defendants' employees entering Units in order to access the Balconies.

59. The defendants are also liable in damages to Vern and all Class Members who owned their Units for:

- (a) the diminution in the value of their Units;
- (b) the delayed resale of Units; and
- (c) the diminution in rental income.

THE RELEVANT STATUTES

60. The plaintiffs plead and rely on the *CJA*, *CPA*, the *Condominium Act*, the *Ontario Building Code*, the *New Homes Warranties Act*, and the *Negligence Act*, R.S.O. 1990.

THE PLACE OF TRIAL

61. The plaintiffs propose that this action be tried at the City of Toronto.

Date: February 9, 2015

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ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings commenced in **TORONTO**

FRESH STATEMENT OF CLAIM

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