

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE)
MR. JUSTICE CULLITY)**

Friday, this 21st day of April, 2006

BETWEEN:

SOLLY LEWIS and HERSL KALIF

PLAINTIFFS

and

**CANTERTROT INVESTMENTS LIMITED, SANDOR HOFSTEDTER,
MARK SAMUEL MANDELBAUM, GEORGE HOFSTEDTER, LARRY FROM,
ALEX LEWIN, HELEN GORENDER and NORMAN HILL REALTY INC.
H & R PROPERTY MANAGEMENT LTD., and STANLEY CAPPE**

DEFENDANTS

PROCEEDINGS COMMENCED UNDER THE *CLASS PROCEEDINGS ACT*

ORDER

THIS MOTION made by the Plaintiffs for an Order certifying this action as a class proceeding was heard on June 28, 29, 2005, January 17, March 16 and March 24 2006, at 361 University Avenue, Toronto, Ontario.

ON READING the Notices of Motion, and the Affidavits of Solly Lewis sworn March 29, 2005, Larry Froom sworn May 9th, 2005, the Affidavit of Keith Landy sworn November 11, 2005, the Affidavit of Lawrence P. Morassutti sworn December 20, 2005, the Affidavit of Andrew Neuman sworn December 23, 2005, the transcripts of the cross-examinations of Solly Lewis and Hersl Kalif held on June 15th, 2005, and the transcripts

of the cross-examination of Larry Froom held on the 8th day of June 2005. and the Facta filed, and on hearing submissions of counsel for the parties, and written submissions as to costs.

1. **THIS COURT ORDERS** that the action is hereby certified as a Class Proceeding.
2. **THIS COURT ORDERS** that the Plaintiff Class ("the Class") shall be comprised of all persons who entered into Agreements of Purchase and Sale to purchase condominium units at 745 New Westminster **and** who received title to their units from the Defendant the Declarant Cantertrot Investments Limited **after** June 28, 2002, other than persons who **after** June 28th, 2002 entered Agreements with third Parties (not the Declarant Cantertrot), to purchase units at 745 New Westminster.
3. **THIS COURT ORDERS** that Solly Lewis and Hersl Kalif be appointed as representative Plaintiffs to represent all members of the Class.
4. **THIS COURT ORDERS** that the Plaintiffs' claim (more fully described in the Amended Statement of Claim) can be summarized as follows:
 - a) the Class reasonably relied upon the Flyer and the Disclosure Budget Statement to contain accurate information on the Budget for the corporation for the first year after registration of the condominium corporation. As a consequence of this reliance, the Class executed Agreements to purchase units at 745 New Westminster and proceeded to complete the transaction;
 - b) the information in the Flyer and Disclosure Budget Statement was inaccurate, false, deceiving and misleading and failed to contain material statements or information. The information in the Flyer and Disclosure Budget Statement was never amended nor revised;

- c) the Defendants disseminated the Flyer or the Disclosure Budget Statement to the Class;
- d) the Defendants knew or ought to have know that the Class would be receiving the Flyer and Disclosure Budget Statement and knew the documents were inaccurate, false, deceiving or misleading, and knew the documents failed to contain material statements or information;
- e) the Defendants or some of them are liable to the Class for compensation, damages and an oppression remedy on the basis of fraud, deceit, negligence, negligent misrepresentation breach, of contract, breach of fiduciary duty, waiver of tort, unjust enrichment, quantum meriut, restitution, constructive trust, s.245 of the *Ontario Business Corporations Act* and s.133(2) of the *Condominium Act*, S.O.1998, C.19 and s.52 (5) of the *Condominium Act*, R.S.O. 1990, c.C26.
- f) the Defendants or some of them, are liable to the Class for punitive damages.

5. THIS COURT ORDERS that the following are the common issues to be resolved in trial between the Defendants and the Class:

- a) Did the Defendants, or any of them, breach a duty of care owed to members of the Class?
- b) Did the Defendants, or any of them know – or ought they to have known – that the information with respect to the maintenance fees and monthly assessments in the disclosure statement, budget and flyer were inaccurate, false, deceptive, misleading and did not contain material statements or information?
- c) Did the Defendants, or any of them, misrepresent in the disclosure statement, budget and flyer the amount of maintenance fees and common expenses?
- d) Did the Defendants, or any of them, make such misrepresentations intentionally and with the intent to deceive Class members?
- e) Absent any other material representations, or material facts within the knowledge of a Class member, would it have been reasonable for such member to have relied on such misrepresentations in making the decision to purchase a unit?

- f) If the answer to question (a), (b), (c), or (d) is yes, what would be the measure of damages for Class members who relied reasonably on such misrepresentations?
- f.1) If the answer to question (a), (b), (c), or (d) is yes, did the Defendants, or any of them thereby breach contractual obligations owed to the members of the Class?
- f.2) If so, how are the Defendants, or any of them, liable in damages and how are such damages to be computed?
- f.3) If the answer to question (a), (b), (c), or (d) is yes, are the members of the Class entitled thereby to a restitution of benefits obtained by the Defendants, or any of them?
- f.4) If the answer to question (f.3) is yes, what would be the measure of such restitution?
- g) Did the Defendants, or any of them, fail to comply with the statutory disclosure requirements of the *Condominium Act*?
- h) Did the Defendants, or any of them, deliberately withhold information from the Class that the maintenance fees were likely to be substantially higher than as represented in the disclosure statement, budget and flyer?
- i) Did the Defendants, George Hofstedter, Larry Froom and Alex Lewin, or any of them, owe fiduciary duties to the Class and, if so, did they breach those duties?
- j) Did the Defendants, or any of them, take steps to remove all the assets from Cantertrot, rendering it judgment proof?
- k) Were the acts or omissions of the Defendants, or any of them, oppressive or unfairly prejudicial or in disregard of the interests of the Class for the purposes of s.248 of the OBCA?
- l) Should punitive damages be awarded against the Defendants or any of them?

6. **THIS COURT ORDERS** that the Plaintiffs' solicitors Landy Marr LLP shall forthwith deliver, by prepaid ordinary mail, a copy of the Notice attached as Schedule "A" to this Order, to all of the members of the Class known to the Plaintiffs and their solicitors Landy Marr LLP, at Class Members' last known addresses as known to the Plaintiffs and their counsel, and such notice shall also be published in one issue of *THE*

LIBERAL newspaper in Thornhill. The costs of such notification and publication are to be borne by the Defendants, subject to further review by the Court at the conclusion of these proceedings.

7. **THIS COURT ORDERS** that members of the Class who do not opt out of this Class proceeding will be bound by the outcome of the Class proceeding. Any class member who wishes to opt out of this class proceeding must advise Landy Marr LLP, Barristers & Solicitors, Suite 900, 2 Sheppard Avenue East, Toronto, Ontario, M2N 5Y7, Canada (Fax. No: 416-221-8928) in writing, of their opting out of the class proceeding **by no later than July 1, 2006**. If a class member opts out of the Class proceeding, the Class member will not be entitled to share in any settlement which may be reached in the action or in any judgment which may be recovered at trial. If a written request to opt out is not received by **July 1, 2006**, the class member will automatically be included in the Class.

8. **THIS COURT ORDERS** that the Defendants shall within 30 days of this order furnish to the Plaintiffs' counsel Landy Marr LLP, a list of the class members (as the class is defined in paragraph 2 above). Included in the list shall be the following information, if known by the Defendants:

- a) Unit purchased;
- b) Name(s) of purchasers;
- c) Purchaser's solicitor;
- d) Purchaser's last known address;
- e) Purchaser's home and cell phone number, email address and fax number.

9. **THIS COURT ORDERS** that Landy Marr LLP, shall write to any addresses disclosed by the list provided pursuant to paragraph 8 above, which are new addresses not included in the Notices sent pursuant to paragraph 6 above.

10. **THIS COURT ORDERS** that the parties shall exchange sworn Affidavits of Documents and Schedule "A" documents on or before September 1st, 2006.

11. **THIS COURT ORDERS** that the parties attend to be examined for discovery on or before November 30th, 2006, subject to any further order of the Court.

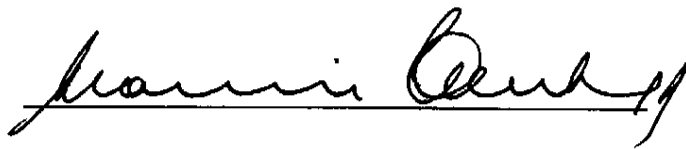
12. **THIS COURT ORDERS** that costs of the certification motion are awarded to the Plaintiffs fixed at \$50,724.97 inclusive of GST and all disbursements, such costs being payable within 30 days of today's date.

THIS ORDER BEARS INTEREST AT THE RATE OF 5.0% PER CENT PER ANNUM FROM THIS DATE.

ENTERED AT / INSCRIT À T. MONTREAL
ON / BOOK NO.
LE / DANS LE REGISTRE NO.

MAY - 9 2006

AS DOCUMENT NO.
À TITRE DE DOCUMENT NO.
PER / PAR:



SCHEDULE 'A'

NOTICE

Under The Class Proceedings Act of Ontario.

TO: Purchasers of a condominium development known as The Residence at Beauclaire, York Region Standard condominium Corporation No. 974, 745 New Westminister, Thornhill ("YRSCC No. 974").

If you are or were the purchaser of any condominium unit of the development known as **The Residence at Beauclaire**, located at Centre Street and New Westminister Drive (745 New Westminister Drive), Thornhill, Ontario, please read this notice carefully.

The Lawsuit

By Order dated April 21st, 2006, of Mr. Justice Cullity of the Ontario Superior Court of Justice, a civil action was certified as a class proceeding, under the Class Proceedings Act of Ontario.

The Court order provides that the Plaintiff Class ("the Class") shall be comprised of all persons who entered into Agreements of Purchase and Sale to purchase condominium units at 745 New Westminister **and** who received title to their units from the Defendant the Declarant Cantertrot Investments Limited **after** June 28, 2002, other than persons who **after** June 28th, 2002 entered Agreements with third Parties (not the Declarant Cantertrot), to purchase units at 745 New Westminister

The action is against Cantertrot Investments Limited, and certain other corporations and individuals allegedly involved in the sale of units in this condominium development. The claims being made in the lawsuit concern alleged misrepresentations relating to excessive maintenance fees charged in the first year of occupation of the condominium.

Financial Consequences of the Lawsuit

As a member of the Class, you may be entitled to compensation if the action is successful. If the action is not successful, as a member of the Class, you will not be responsible for any of the costs of the trial of the common issues.

Your right to Opt Out of the Lawsuit

Any judgment in the lawsuit, whether favourable or not, will bind all of the members of the Class who have not opted out. All members of the Class who do not opt out of the Class action will be bound by the outcome of the Class action. If you wish to opt out of the Class, **you must advise Landy Marr LLP, Barristers & Solicitors in writing, by mail or fax to the address listed below, so that the Opt Out notification is**

received by no later than July 1 2006. If you opt out of the Class action, you will not be entitled to share in any settlement which may be reached in this lawsuit or any compensation which may be recovered from the Defendants, and you will not be bound by any decision in the class proceedings. If your written request to opt out is not received by the above date, you will remain a member of the Class. **YOU WILL AUTOMATICALLY BE INCLUDED IN THE CLASS UNLESS YOU OPT OUT.**

Participation by Class Members

It is possible that class members may be required to participate individually at a later stage, such as in the determination of their loss. If this is to occur, you will be given further notice, and may decline to participate if you so wish. At that time, if your individual participation is required, Landy Marr LLP will represent you at no additional fee to you, and will advise you of the consequences of such participation.

Agreement with Solicitors

Landy Marr LLP has agreed to act as counsel in this legal proceeding. The Class does not have to pay any fees to the lawyers unless the action is successful. If the lawsuit is successful or a satisfactory settlement is negotiated and approved by the Court, then the law firm of Landy Marr LLP will request fees based upon a percentage of the amount actually recovered, and the stage of the litigation when the matter was concluded. Such fees must be approved by the Court.

This notice is dated this day of April 2006

Please contact:

LANDY MARR LLP
Barristers & Solicitors
900-2 Sheppard Avenue East
Toronto, Ontario
M2N 5Y7

Samuel S. Marr
smarr@landymarr.com

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Tel : (416) 221-9343
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SOLLY LEWIS et al

Plaintiffs

v.

CANTERTROT INVESTMENTS LIMITED et al

Defendants

Court File No. 04-CV-277412CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER

LANDY, MARR LLP
Barristers & Solicitors
Suite 900
2 Sheppard Avenue East
Toronto, Ontario
M2N 5Y7

Attention: Samuel S. Marr (LSUC # 16906F)
and Vadim Kats (LSUC #43095K)
Tel : (416) 221-9343
Fax: (416) 221-8928

Solicitors for the Plaintiffs