

**TO: Purchasers in the World Centre Project (Class Litigants)**

**Landy, Marr & Associates - Kings Land Developments Inc. Class Action**

**NEWSLETTER No. 3**

**(October 10<sup>th</sup>, 2002)**

This Newsletter advises the Class Litigants of the progress and latest developments in this action.

### **1. Examinations for discovery**

We have completed the initial round of examinations for discovery. Examinations for Discovery are an opportunity for the lawyer for a party to ask questions of the opposing party, under oath, in the presence of a court reporter. Every question asked and answered is recorded, and a transcript of the testimony is later prepared. The testimony given at the examination is important since it may be used against the party at trial if the other lawyer is able to obtain admissions. The examination is not held in a courtroom but in the court reporter's office and no Judge is present.

The purpose of the Examination for Discovery is to allow each side to learn what evidence the other party possesses and will use at trial. This ensures that neither party will be surprised at trial. The examination also enables each party to evaluate the strengths and weaknesses of their case. Another purpose of discovery is to obtain evidence and documents in the possession of the other side.

Examinations for Discovery of the Defendants were held on the following dates:

- (a) Henry Lam (Kings Land) July 22 and 23, 2002 and September 12, 2002;
- (b) Jeffrey Beber (Levitt, Beber) July 24, 25, and 26, 2002; and
- (c) Stephen Wong (Living Realty) September 9, 2002.

The representative Plaintiffs have not yet been examined.

### **2. Recovery of Money**

During discovery of the Defendant Henry Lam, it was determined that Kings Land maintained an account at the Bank of Montreal, at 1 Robert Speck Parkway, Mississauga, Ontario, which possessed the approximate sum of \$293,000.00.

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Upon learning this information Landy, Marr & Associates obtained a Court Order from the Honourable Justice Nordheimer dated July 24, 2002, wherein it was ordered that the Bank of Montreal pay to the Accountant of the Superior Court of Justice, to the credit of this Class action and companion actions #50928/98, #53723/99 and 97-CV-138971, all monies including interest accrued thereon, held on behalf of, in the account of, or to the

credit of Kings Land.

The sum of \$299,151.04 was received from the Bank of Montreal on August 6, 2002 and was paid into Court to the credit of this action and companion actions #50928/98, # 53723/99 and 97-CV-138971.

Landy, Marr & Associates then obtained Judgment against Kings Land. The Judgment for the Class Plaintiffs is for the total amount of deposits paid by the members of the class, who have not opted out of Class Proceeding, being \$5,714,520.00 plus prejudgment interest from the date the deposits were paid, at the prescribed rate of the *Courts of Justice Act, R.S.O. 1990*, as amended. Collecting any more money with respect to this Judgment is unlikely.

On October 4, 2002 Landy, Marr & Associates obtained a court order the Honourable Justice Nordheimer for the distribution of the \$299,151.04 received from the Bank of Montreal. The Order provided that the sum of \$ 14,225.71 be paid to Landy, Marr & Associates. The sum of \$14,225.71 included the sum of \$10,000.00 for party and party costs in certifying the Class Action, pursuant to the Order of Justice Cumming dated September 12<sup>th</sup>, 2001, which amount has was unpaid, and the sum of \$ 4,225.71 representing the costs of advertising, which Kings Land had not paid despite Justice Cumming's Order. Of the remaining monies in Court, being the sum of \$274,925.33, Mr. Justice Nordheimer ordered that they be paid out of Court as follows:

- i) the sum of \$151,074.53 or 53.14% to Landy, Marr & Associates in trust;
- ii) the sum of \$131,259.15 or 46.17% to Himelfarb, Proszanski in trust;
- iii) the sum of \$1,961.65 or .69% to Morton Adelson in trust; and
- iv) all accumulated interest be paid to the aforementioned law firms in trust in the percentage indicated in the above sub-paragraphs (i), (ii) and (iii).

Landy, Marr & Associates has calculated that the total of all deposits is \$10,984,092.00, without interest. The deposits being:

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i) Court file no. #50928/98 and #53723/99

(Adelson's clients) \$ 75,120.00 or .69% of \$10,984,092.00

ii) Court file no. 97-CV-138971(Quance's clients) \$ 5,029,872.00

or 46.17% of \$10,984,092.00

iii) Class Plaintiffs (Landy, Marr & Associates' clients)

or 53.14% of \$10,984,092.00 \$5,789,100.00

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TOTAL \$10,984,092.00

Pursuant to the Court Order, the monies received by Landy, Marr & Associates will not be distributed to the Class Plaintiffs. Landy, Marr & Associates, has undertaken to provide, when required by the Court, an accounting of all monies received and expended by Landy, Marr & Associates.

The sum of \$151,074.53 will be used by Landy, Marr & Associates to pay for disbursements and experts. An expert witness prepares a written report and gives expert testimony at the trial. In order to succeed in this case, the Plaintiffs need four (4) experts. An accounting expert is necessary to examine the books and records to do a forensic accounting, tracing the deposit monies. A land use planning expert will comment on the land use issues. An expert lawyer will comment on Mr. Beber's conduct, and an expert Realtor will comment on Living Realty's actions.

Mr. Quance (counsel for most of the Plaintiff's who have opted out of the Class Proceeding) will use his share of the money recovered to pay for 50% of the costs of these experts, with Landy, Marr & Associates paying the other 50%.

### **3. Future Timetable**

On October 4<sup>th</sup>, 2002, Landy, Marr & Associates brought a motion. Among other relief sought, Justice Nordheimer ordered that certain questions refused at the Examinations for Discovery, and documents not yet produced, be answered or provided within 60 days. Justice Nordheimer further ordered that the remaining Examinations for Discovery are to be completed by January 30<sup>th</sup>, 2003.

The remaining Examination for Discovery have now been scheduled as follows:

Henry Lam - December 4<sup>th</sup>, 2002

Linda Lam - December 6<sup>th</sup>, 2002

Class Plaintiffs - December 16<sup>th</sup> and 17<sup>th</sup>, 2002

Jeffrey Beber - January 2003

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After January 30, 2003, we anticipate that a trial date will be set, hopefully for later in 2003 or early 2004.

You can also access information on the file and newsletters by visiting our website at: [www.landymarr.com](http://www.landymarr.com).

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