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Feb. 17, 2015

PURSUANT TO
CONFORMÉMENT A

RULE/LA RÉGLE 26.02

THE ORDER OF JUSTICE BELABABA
L'ORDONNANCE DU

DATED / FAIT LE FEBRUARY 17, 2015

Court File No. CV-12-448294 00CP

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN

YVETTE NOLEVAUX, RENE NOLEVAUX and
DEBRA ELAYNE WILLIAMS

Plaintiffs

and

KING AND JOHN FESTIVAL CORPORATION, THE DANIELS CORPORATION,
KPMB DESIGN INC. KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS,
KIRKOR ARCHITECTS AND PLANNERS,
TORO ALUMINUM RAILINGS INC., AND TORO GLASSWALL INC.,

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH STATEMENT OF CLAIM
(Notice of Action issued March 7, 2012)

DEFINITIONS

1. The following definitions apply for the purposes of this statement of claim:
 - (a) "Architects" means Kirkor, KPMB, and KPMB Architects;
 - (b) "Balcony" and "Balconies" mean the outdoor exclusive use common elements for the Units;
 - (c) "Builders" means KJFC and/or Daniels;
 - (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 80 John Street, in the City of Toronto, during the period commencing on May 1, 2011 to and including November 30, 2012.
- (f) “**Class Period**” means the period commencing on May 1, 2011 to and including November 30, 2012;
- (g) “*Condominium Act*” means the *Condominium Act, 1998*, S.O. 1998, c. 19.
- (h) “**Condominium Corporation**” means Toronto Standard Condominium Corporation No. 2155;
- (i) “*CPA*” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (j) “**Daniels**” means The Daniels Corporation;
- (k) “**Elayne**” means Debra Elayne Williams;
- (l) “**Falling Glass**” means **Glass Panelling** which was installed in balcony guards on **Balconies at Festival Tower** that shattered during the **Class Period**;
- (m) “**Festival Tower**” means the condominium development located at 80 John Street in the City of Toronto, Ontario;
- (n) “**Glass Panelling**” means the tempered glass which was installed on **Balconies at Festival Tower**;
- (o) “**Green Mesh**” means the polyethylene covering installed on the **Balconies**;
- (p) “**Kirkor**” means Kirkor Architects and Planners;
- (q) “**KJFC**” means King and John Festival Corporation;
- (r) “**KPMB**” means KPMB Design Inc.;
- (s) “**KPMB Architects**” means Kuwabara, Payne, McKenna, Blumberg Architects;
- (t) “*New Home Warranties Plan Act*” means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31;

- (u) “**Ontario Building Code**” means the *Building Code Act, 1992*, S.O. 1992, c. 23 and O. Reg. 350/06;
- (v) “**Rene**” means Rene Nolevaux;
- (w) “**Toro**” means Toro Aluminum Railings Inc.;
- (x) “**Unit**” or “**Units**” means a condominium unit or an apartment, including its **Balcony, at Festival Tower**; and
- (y) “**Yvette**” means Yvette Nolevaux.

RELIEF SOUGHT

2. Yvette, Rene and Elayne claim on their own behalf, and on behalf of the 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 and supply of the Glass Panelling and is liable in damages to the Class;
- (d) a declaration that the Architects were negligent in the design of the Balconies, selection of the materials used in construction of the balconies, and in the supervision of the installation of the Glass Panelling and are liable in damages to the Class;
- (e) a declaration that KJFC was in breach of contract and that both KJFC and Daniels are liable in damages to Class Members who purchased Units from KJFC for that breach of contract;
- (f) a declaration that KJFC and Daniels form one economic unit or one common enterprise and each is therefore vicariously liable for the other’s acts and omissions;

- (g) general damages in the amount of \$15,000,000.00, or such other sum as this Honourable Court finds appropriate;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) prejudgment and postjudgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (l) 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
- (m) such further and other relief as to this Honourable Court seems just.

OVERVIEW OF THIS ACTION

3. Festival Tower is a real estate development in the City of Toronto which consists of a 41 storey residential condominium above a five storey podium building. It contains 378 residential Units, 351 storage units, 249 parking units, one operations manager unit, one club suite management unit and two guest units, among other things.
4. In or around May 2011, Glass Panelling shattered and fell from a Balcony on the Festival Tower onto the podium below the Balcony. On or about August 2, 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 Class Members' units and locked the Balconies, thereby preventing the Class Members from accessing their Balconies for a period of time. When they did regain access, the Balcony railings and Glass Panelling were covered in Green Mesh. 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. Yvette and Rene purchased Unit 2603 in Festival Tower directly from KJFC. They took possession of their Unit in or around February 2011 and closed the transaction on June 28, 2011.
7. Elayne has been a tenant of Unit 3109 at Festival Tower since July 1, 2011.

The Defendants

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

9. On May 20, 2011, KJFC registered a Declaration and Description, thereby naming itself the “declarant” within the meaning of the *Condominium Act*. At all material times, KJFC marketed and sold the Units in the Festival Tower.
10. At all material times, KJFC selected the trade contractors and supervised and controlled their access to, and construction of, the Balconies.
11. Daniels is a corporation incorporated under the laws of Ontario with head office located in the City of Toronto. Daniels carries on the business of, *inter alia*, developing and constructing residential and commercial real estate. At all material times, Daniels held itself out as a developer and/or promoter of the development of Festival Tower. Daniels is vicariously liable for the acts and omissions of its employees, agents and servants.
12. KPMB is a corporation incorporated under the laws of Ontario with head office located in the City of Toronto. It is in the business of providing architectural services in Ontario.
13. KPMB Architects is a partnership of architects which provides architectural services in Ontario.
14. Kirkor is a partnership of architects which provides architectural services in Ontario.
15. Together, KPMB, KPMB Architects and Kirkor acted as the architects for Festival Tower. The Architects are vicariously liable for the acts and omissions of their partners, employees, agents and servants. At all material times, the Architects designed the Balconies including the Balcony’s guard railings and the Glass Panelling installed at

Festival Tower. They also selected the materials to be used in the construction of the Balconies.

16. 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 the Festival Tower. Toro is vicariously liable for the acts and omissions of its employees, agents and servants.
17. At all material times, Toro was the trade contractor hired by KJFC and supplied and installed the Glass Panelling and guard railings on the Balconies at Festival Tower.

FACTS SUPPORTING CLASS MEMBERS' CLAIMS AGAINST THE DEFENDANTS

18. In or around 2004, Daniels and/or KJFC proposed to build a condominium project on or around 80 John Street in the City of Toronto.
19. Daniels and KJFC began excavation for the construction of the Festival Tower on or about February 21, 2007.
20. On or around that time, Daniels and KJFC began to promote and market the sale of Units in Festival Tower to the general public. In doing so, the names of both of these defendants were placed on marketing materials.
21. In or around 2004, KJFC and/or Daniels also entered into agreements with the Architects to provide architectural services for the construction of Festival Tower.

22. KJFC entered into an agreement with Toro dated March 18, 2009, in which Toro agreed to furnish all the materials and perform all the work with respect to the construction of the Balconies.
23. Toro subsequently purchased the Glass Panelling to be used in the construction of the Balconies from a company in China and carried out the installation of the Glass Panelling on the Balconies.
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 in Toronto, Ontario, which shattered and fell to the street below in April 2010 and thereafter.
25. In or around May 2011, Glass Panelling installed on the Festival Tower shattered and fell onto the podium below the Balcony. On or about August 2, 2011, another similar incident occurred wherein Falling Glass fell onto the street.
26. On or around August 2011, employees of one or more of the defendants entered Units and sealed in the sliding doors to the Balconies so that they could not be opened from the inside of the Units for a period of time. A notice was posted on the Balcony doors of every Unit prohibiting the opening of the Balcony doors or use of the Balconies.
27. Subsequently, one or more of the defendants covered the Balcony guard railings and Glass Panelling in Green Mesh.

28. As a result of the Falling Glass and the installation of Green Mesh, all Class Members lost the use of their Balconies for a period of time. When they regained access, the Green Mesh prevented the Class Members from enjoying their Units due to the obstructed view and the decreased cosmetic appearance of Festival Tower, thereby suffering a loss of enjoyment of their Units.

FACTS REGARDING DANIELS AND KJFC

29. Daniels and KJFC were operated as one economic unit or a single group enterprise as follows:
- (a) Each of Daniels and KJFC is a parent or subsidiary of the other or is an affiliate of the other;
 - (b) Each of the two companies is the agent of the other;
 - (c) Both companies have at least three common officers and/or directors, namely Tom Dutton, Judy Lem, and Mitchell S. Cohen;
 - (d) Both companies have common offices and employees;
 - (e) The acts and omissions set out in the claim were done by Daniels and KJFC in pursuit of their common enterprise;
 - (f) Daniels and KJFC carry on business jointly and are operated as one economic unit or one economic enterprise; and
 - (g) Both companies held themselves out to consumers as operating as one economic unit.
30. While KJFC entered into contracts with trade contractors and purchasers of Units, Daniels and KJFC 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 or omissions of the other.

31. As one economic unit or single group enterprise, each of KJFC and Daniels acted as the agent for the other.

FACTS REGARDING THE PLAINTIFFS' INDIVIDUAL CIRCUMSTANCES

René and Yvette

32. In or about February 2011, Yvette and Rene took possession of Unit 2603 in Festival Tower. Their purchase of this Unit from KJFC subsequently closed on June 28, 2011.
33. In or around May 2011, they rented out their Unit to a tenant for a 6 month term at an agreed upon rate of \$4,720/month.
34. In or around July 2011, KJFC and/or Daniels posted notices around Festival Tower indicating that as a result of the Falling Glass, the Balconies would not be accessible for a period of time.
35. Soon thereafter, Yvette and Rene's tenant informed them that she would move out of the Unit if they did not lower their rent due to the loss of use of the Balcony. Yvette and Rene lowered the rent to \$4,500/month, beginning in July 2011, and also paid for their tenant's moving expenses to remove furniture that she had purchased for use on the Balcony.

36. On or about November 2011, Yvette and Rene's tenant regained access to the Balcony after the Green Mesh was installed. Yvette and Rene have continued to rent out their Unit to other tenants for \$4,500/month due to the unsightly Green Mesh and chance that their tenants may not be able to access the Balcony again for a period of time.
37. Yvette, Rene and Class Members who owned their Units have therefore suffered a diminution in the value of their Units and in their rental income.

Elayne

38. On or about June 1, 2011, Elayne entered into a lease agreement to rent Unit 3109 at Festival Tower for a term of 18 months beginning July 1, 2011.
39. In or about August and September 2011, employees of one of the defendants entered Elayne's Unit and sealed the Balcony doors such that they could not be opened from the inside.
40. The employees then wrapped a green mesh over the glass panelling and eventually allowed Elayne access to the balcony for a period of time.
41. The Balcony doors were once again sealed off, during which time the Glass Panelling was replaced.
42. Throughout construction, one of the four elevators that service the building was used solely for construction purposes and was inaccessible to occupants or their guests. This caused considerable wait times for the elevators.

43. Elayne and Class Members who occupied Units have therefore suffered from the loss of the use of their Balconies, loss of enjoyment of their Units, and a disruption of their privacy.

CAUSES OF ACTION

Breach of Contract

44. On June 28, 2011, the Yvette and René entered into an Agreement of Purchase and Sale for Unit 2603 with KJFC (the "Contract").
45. The Contract contained the following terms:
- (a) That the Units and the common areas in the Festival Tower would be completed in the manner specified in the plans and specifications for the Festival Tower filed with the City of Toronto and contained in the Description; and
 - (b) That the Units and the common areas in the Festival Tower would be completed in a good and workmanlike manner in accordance with the Ontario Building Code and good construction practice.
46. Section 13 of the *New Homes Warranties Plan Act* is incorporated into the terms of the Contract. As a result, KJFC warranted to the plaintiffs that the Units and the common elements in the Festival Tower 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.

47. All Class Members who purchased Units from KJFC entered into contracts with KJFC on similar terms.
48. Daniels warranted that it was the developer or builder of the Festival Tower by placing its mark "Daniels" on the marketing material; by displaying it at the presentation centre; by placing it on the web site for the Festival Tower development; by having Daniels executives act as spokespersons in media announcements; and by stating the project was a Daniels project.
49. Daniels knew that purchasers would associate the name Daniels with the construction of the Festival Tower and intended that prospective purchasers do so. Daniels' representation that it was the developer or builder therefore constitutes a collateral contract whereby Daniels has agreed to be bound by all of the terms of the Contract, to the same extent as KJFC.
50. All Class Members who purchased Units from KJFC were induced by Daniels' marks and representations, as described at paragraph 48, to enter into the Contract.
51. The Glass Panelling, and/or the balcony railing guards of the Festival Tower, were designed, supplied, constructed and/or installed in an improper and defective manner by the Builders, Toro, and/or the Architects.
52. The Glass Panelling is a construction deficiency which existed in the Festival Tower at the time of the purchase of the Units from KJFC.
53. This construction deficiency has led to incidents of Falling Glass as particularized above.

54. This deficiency constitutes a breach of contract by KJFC and Daniels in that the Units were not constructed within the terms of the Contract.
55. The deficiency also constitutes a breach by KJFC and Daniels of the statutory warranty under the *New Homes Warranties Plan Act*.
56. Yvette and Rene plead on behalf of themselves and on behalf of each Class Member who purchased Units directly from KJFC, that as a result of these breaches of contract and statutory warranties, KJFC and Daniels are liable to them in damages.

Negligence of the Builders

57. 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.
58. 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 Festival Tower.
59. The Builders knew that 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, 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.

60. 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) They entered into a contract or a collateral contract with purchasers of the 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) Daniels warranted that it was a builder.
61. 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 the Festival Tower 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 Festival Tower was done in accordance with the Ontario Building Code, good construction practice and the plans and specifications for the Festival Tower 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 failed to require adequate quality controls and testing of the glass received from China before installing the Glass Panelling; and
- (j) they failed to specify that Toro use laminated glass instead of tempered glass.

Negligence of Toro

- 62. 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.
- 63. 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.
- 64. Toro knew 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, 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.

65. 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 Toros' 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.
66. 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 the Festival Tower 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 Festival Tower was done in accordance with the Ontario Building Code, good construction practice and the plans and

specifications for the Festival Tower filed with the City of Toronto and contained in the Description;

- (h) they failed to inspect the Glass Panelling and test it for defects prior to installing it; and
- (i) 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.

Negligence of the Architects

- 67. The Architects owed a duty of care to the plaintiffs and other Class Members to carefully select materials that were fit for their intended purpose and to design and monitor the construction of the Balconies such that there would be no incidents of Falling Glass.
- 68. The circumstances of the Architects being in the business of providing architectural services are such that they were under an obligation to be mindful of the plaintiffs and other Class Members when designing, monitoring the construction of the Balconies, and selecting materials for use in the construction of Festival Tower.
- 69. The Architects knew that if they designed and/or selected defective Glass Panelling and/or defective balcony railings, it was likely that Falling Glass would cause damage to the Class Members' property, restrict their access to the Balconies, decrease their enjoyment of the Units, delay in the resale of their Units, diminish the value of the Units, and decrease rental income generated from the rent of Units.
- 70. There was a sufficient degree of proximity between the plaintiffs and other Class Members and the Architects to establish a duty of care because:

- (a) It was reasonable for the plaintiffs and other Class Members to expect that the Architects had implemented adequate safeguards to ensure that the Balconies were constructed in a manner whereby Glass Panelling would not shatter and fall;
- (b) The Architects had a duty to ensure that the Builders and Toro complied with all standards relevant to the construction of Balconies;
- (c) The plaintiffs and other Class Members were vulnerable to any failure on the part of the Architects 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.

71. The Architects breached the standard of care expected of them in the circumstances and as particularized below:

- (a) they permitted the Builders and Toro to use materials which they knew or ought to have known were not of the best quality;
- (b) they permitted the Builders and Toro to use Glass Panelling which they knew or ought to have known was defective and/or not fit for the purposes for which it was used;
- (c) they permitted the Builders and Toro to install balcony railings which they knew or ought to have known were defective and/or not fit for the purposes for which they were used;
- (d) they failed to ensure due and proper execution of the work by the Builders and Toro;
- (e) they failed to inspect and supervise the work properly or at all during and after the time the Glass Panelling and balcony railings were installed;
- (f) they failed to ensure that the work of the Builders and Toro complied with the design requirements;
- (g) they failed to properly, or at all, review the work of the Builders and Toro to ensure compliance with the plans and specifications;
- (h) they failed to properly or adequately test the materials for incorporation into the Festival Tower, and failed to pass upon the acceptability of the said materials;

- (i) they failed to make any, or any proper, on-site tests during construction of the work to verify acceptability according to specifications;
- (j) they failed adequately, or at all, to control the accuracy and quality of the work performed by their servants and agents, and by the Builders and Toro;
- (k) they failed adequately, or at all, to investigate, report and advise on unusual circumstances as aforesaid;
- (l) they failed adequately, or at all, to carry out final inspection of the work at the conclusion of the construction contract;
- (m) they failed to ensure that the work was performed in accordance with generally accepted architectural standards;
- (n) they failed to provide adequate specifications to Toro for the composite of glass to be installed in the Balcony;
- (o) they failed to require adequate quality controls and testing of the Glass Panelling before installing glass from China; and
- (p) they failed to specify that Toro use laminated glass instead of tempered glass.

DAMAGES

72. 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 the Class Members for:

- (a) the loss of access to the Balconies for a period of time;
- (b) the loss of enjoyment during the period when the Green Mesh covered the Balcony railings; and
- (c) the disruption of their privacy due to one or more of the defendants' employees entering Units in order to access the Balconies.

73. The defendants are also liable in damages to the Yvette and René and all Class Members who owned 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

74. 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

75. The plaintiff proposes 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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