

Court File No: CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

-and-

**PARWELL INVESTMENTS INC., ~~BLEEMAN HOLDINGS LIMITED,~~
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB)
INVESTMENTS LIMITED, and the ELECTRICAL SAFETY AUTHORITY,
~~GREATWISE DEVELOPMENTS CORPORATION and~~
~~77 HOWARD (LHB) INVESTMENTS LIMITED~~**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**RESPONDING FACTUM OF THE PLAINTIFFS
(LEAVE TO AMEND CERTIFICATION ORDER)**

CHARNEY LAWYERS P.C.
151 Bloor Street W., Suite 602
Toronto, ON M5S 1S4

Theodore P. Charney (LSO #26853E)
Caleb Edwards (LSO #65132P)

Tel: 416 964 7950

Email: tcharney@charneylawyers.com
cedwards@charneylawyers.com

STROSBERG SASSO SUTTS LLP
161 Ouellette Avenue
Windsor, Ontario N8X 1K5

Harvey T. Strosberg, KC (LSO #1260400)
Email: harvey@strosbergco.com

PART I – OVERVIEW

1. In this factum the plaintiffs respond to a preliminary issue brought by the Landlord defendants (the defendants), who seek an order preventing the plaintiffs from proceeding with their continued certification motion to add additional common issues, principally on grounds the parties have entered into an agreement to settle the common issues. This Courts' endorsement of December 7, 2023 does not expressly refer to the defendants preliminary issue but that is the thrust of what the court will be deciding at the upcoming hearing on October 1. This is why the defendants served their factum first and styled it as a motion for "Enforcement of Settlement Agreement" and this is the plaintiffs responding factum. The motion to add the ESA to the class action is not proceeding as the case against the ESA is, on consent, to be dismissed without costs subject to court approval.

2. This Court's endorsements of June 12 and December 7 both provide or contemplate the plaintiffs bringing a motion under section 8(3) of the CPA to add additional common issues and there is reference to a potential leave requirement in the context of obtaining leave as a preliminary issue. However, the notice of motion to add common issues which was served on August 31, 2023, was for a continuation of the certification motion - not an 8(3) motion. The difference, which is explained in the body of this argument, turns on there being a court order previously ordering that the certification motion was to continue to a full hearing on the common issue which motion has yet to proceed. An 8(3) motion is something different. It is a motion brought after a full certification hearing. It focuses on adding common issues which were not dealt with (for whatever reason) at the original hearing.

3. In this case, for reasons described below there has yet to be a contested certification motion on the common issues. That is the motion now contemplated by the plaintiffs with the one

impediment being the preliminary issue of the alleged agreement between counsel which is being advanced at this hearing by the defendants.

Further Background

4. This class proceeding arises out of an apartment fire which caused the hurried evacuation of approximately 570 units in two residential towers at 650 Parliament Street in Toronto. Tenants and family members remained out of the building for at least 18 months, then started to return in phases once repairs were completed to their units.

5. In the meantime, all of their possessions remained behind. In January 2019, without providing notice to the class, the defendants sent a private company in to pack up the contents of the units so that they could start repairs. Following this work, the defendants filed an urgent motion for authorization to move and store class members belongings in May 2019. Mr. Martin referred to the situation confronting the parties at that time as a “crisis”.¹ Counsel for the parties then initiated negotiations to swiftly arrive at a solution so the contents could be safely and securely removed to a location where tenants could access them and would reduce the risk of property damage during the moving and storage stage.

6. In this context it was necessary for plaintiffs’ counsel to have authority to negotiate on behalf of the then putative class. The solution was to enter a partial certification order so plaintiff counsel could be appointed as class counsel. The parties could not agree on a certification order that would include all of the proposed common issues sought at that time and so the order provided for a future hearing on the remaining proposed common issues, explicitly stating:²

¹ Affidavit of Caleb Edwards sworn August 10, 2023 [“Edwards Aff.”], Exhibit “G”, p. 478.

² Edwards Aff., Exhibit “D”, p. 461.

this order is made without prejudice to the plaintiffs' right to move for certification as against additional defendants and/or to move for certification of additional classes and/or common issues.

PART II – THE FACTS

A. The June 2019 Order

7. This class proceeding was commenced by Notice of Action, filed on August 31, 2018.³ On October 18 of that year, the plaintiffs filed a Fresh as Amended Statement of Claim.⁴ In that claim, the plaintiffs plead claims in: (1) negligence (paras. 28 – 35); (2) breach of contract (paras. 36 – 41); (3) nuisance (paras. 42 – 45) and rely on both the *Residential Tenancies Act* and the *Occupiers Liability Act* (para. 50).

8. In May 2019, the plaintiffs filed a certification record.⁵ In the notice of motion, the plaintiffs sought to certify common issues for (1) negligence (issues 1-5); (2) breach of contract (issues 9-10); (3) nuisance (issue 11); as well as breaches of the *Residential Tenancies Act* and the *Occupiers Liability Act* (issues 6 – 8). The plaintiffs also sought common issues for aggregate damages and punitive damages.

9. In the same month, the Landlord Defendants (all defendants other than the ESA), brought an urgent motion to permit them to remove the contents of the units for storage while repairs were completed.⁶ This created a problem because, until the matter was certified, there was no class counsel and therefore, no-one who could negotiate on behalf of the class to preserve their rights

³ Edwards Aff., Exhibit “A”, p. 208.

⁴ Edwards Aff., Exhibit “B”, p. 217.

⁵ Edwards Aff., Exhibit “C”, p. 238.

⁶ Affidavit of Nahom Abadi sworn December 1, 2022, Exhibit “B”, p. 44.

while allowing the repairs to the building to go forward.⁷ The solution was the June 14, 2019 consent order of Justice Belobaba.⁸

10. This order certified two common issues in negligence as against the Landlord Defendants only. It explicitly provided that it was “without prejudice to the plaintiffs’ right to move for certification as against additional defendants and/or to move for certification of additional classes and/or common issues.”⁹ Now that there was a certified class, class counsel were able to negotiate with the landlord defendants regarding the process for removal of items.¹⁰

B. The August 2020 Order

11. In September 2019, just two months after the interim certification order, the parties appeared at a CMC before Justice Belobaba. Minutes of the CMC show that the plaintiffs were directed to “prepare and circulate a draft amended certification order with a notice program, the draft notice of certification and the opt out date.”¹¹ The minutes further provide that “A motion to deal with certification against the additional defendants or any third parties, if necessary, and/or **to move for certification of additional classes and/or common issues will be scheduled in due course.** The parties will endeavor to resolve and/or narrow the issues prior to any such motion.”¹²

12. In other words, Justice Belobaba appreciated the initial certification order did not contain a notice program or opt out deadline and a further order was required. He contemplated an order permitting the class to be notified of certification and to opt out, followed by a motion to deal with certification of the balance of the common issues, the addition of parties (the ESA) and an

⁷ Edwards Aff., para. 7;

⁸ Edwards Aff., para. 7; Exhibit “D”, p. 459.

⁹ Edwards Aff., Exhibit “D”, p. 459.

¹⁰ Justice Belobaba’s reasons are published at [Chu v. Parwell Investments Inc. et al.](#), 2019 ONSC 3353 (CanLII).

¹¹ Edwards Aff., Exhibit “E”, p. 464.

¹² Edwards Aff., Exhibit “E”, p. 464 (emphasis added).

additional class – the family class. The defendants’ 30-page factum is inexplicably silent on this direction by Justice Belobaba at the case management conference.

13. While the case management conference took place on September 10, 2019, with the onset of covid, it was not until August 2020 that the parties arrived on a draft amended certification order which included a notice program as directed by the court and one additional matter – a family class. It made sense for a family class to be included at that time so that only one set of notice would be required for optouts. Justice Belobaba signed a “Further Certification Order” which made slight adjustments to the class definition, provided for the addition of a family class (paras. 3 and 4) and for a notice program (paras. 6-4). The order does not certify any additional common issues and does not contain the same statement that it is “without prejudice” to further common issues that the June 2019 order. Nor does it contain, however, a statement that no further amendments can be made to the certification order. That said, the CMC direction was very clear that the court contemplated a further motion to address common issues after the notice program.

C. The Statement of Defence Joins Issue on the Remaining Proposed Common Issues

14. The Fresh as Amended Claim attached as Exhibit “B” to the affidavit of Caleb Edwards is still the operative claim in this action. The Landlord Defendants filed their first statement of Defence in September 2020, shortly after the Further Certification Order. In January 2022, the defendants filed a Fresh as Amended Statement of Defence.

15. Contrary to their position on the finality of the common issues, the defendants’ statement of defence is not confined to the common issues for negligence. They deny any breaches of contract or violations of the *Residential Tenancies Act*.¹³ They deny nuisance¹⁴ and state that the

¹³ Defendants’ Fresh as Amended Statement of Defence [DSOD], at paras. 91 – 93.

¹⁴ DSOD, at paras. 94 – 97.

Occupiers Liability Act does not apply.¹⁵ The defendants also plead affirmative defences including in contract, which engage the terms of the lease. The defendants allege these terms exempt them from liability for property damage and required tenants to obtain insurance.¹⁶

16. In short, as a result of the defendants' own pleading - one or more of the plaintiffs' additional common issues will now be required. For example, the defendants' reliance on the terms of the lease is advanced as a defence to the damages sought for negligence, which in turn raises the plaintiffs proposed common issue of whether there was a breach of contract. In turn that raises the provisions of the *Residential Tenancy Act* which govern the duties of the landlord and whether the landlord can contract out of them. Similarly, the *Occupiers Liability Act* is intended to fill in a gap in the *Residential Tenancies Act* and sets out the duties of occupiers (including the defendants) "to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises."¹⁷ It would apply to individuals in the units who were not covered by the *Residential Tenancies Act*.

D. The Current Motion

17. In December 2022, the plaintiffs served a Notice of Motion to seek an order adding the common issues that formed part of the original certification motion record that were not certified by the June 13, 2019 order and to expand certification to include new common issues the plaintiffs sought related to privacy breaches by the landlord's agents during the contents packing and removal stages.¹⁸ In March 2023, at a case conference in front of Justice Belobaba, the plaintiffs agreed not to seek to join the privacy claims to the balance of the certification motion.¹⁹ The

¹⁵ DSOD, at paras. 98 – 102.

¹⁶ DSOD, at paras. 139 – 143.

¹⁷ *Occupiers' Liability Act*, RSO 1990, c O.2, s 3.

¹⁸ Edwards Aff., para. 15.

¹⁹ Edwards Aff., para. 20.

remaining disputes were not resolved before Justice Belobaba's unfortunate passing, and this Court was seized with the matter.

18. In June 2023, this Court issued an endorsement directing the plaintiffs to "serve [an] amended notice of motion and motion record confined to (i) remaining common issues and addition of ESA as a party and (ii) any matter relevant to leave if required."²⁰ That amended notice of motion and record was served in August 2023 and forms the basis for the plaintiffs' motion to continue certification to add common issues should the plaintiffs survive the defendants' preliminary motion.

19. In their notice of motion, in addition to the negligence issues already certified, the plaintiffs seek to have certified additional common issues in (1) breach of contract (issues 8-9); (3) nuisance (issue 10); as well as breaches of the *Residential Tenancies Act* and the *Occupiers Liability Act* (issues 6 – 7). The plaintiffs also seek common issues for aggregate damages and punitive damages and administrative common issues (issues. 12 – 14).

20. With respect to the motion record before the Court on this preliminary motion, there is dispute between the parties as to certain narrative paragraphs in the Affidavit of Caleb Edwards, in particular, paras. 16, 17, and 21. In order to narrow the issues in dispute, the plaintiffs are content not to rely on paragraphs 16 or 17 in Mr. Edwards' affidavit.

E. Did the Plaintiffs Agree to Drop the Remaining Common Issues?

21. The defendants maintain that the parties agreed that the Further Certification Order would be the final certification order in this action and that no further common issues would be certified. However, there are no minutes of settlement or emails which clearly set out an agreement between the plaintiffs and the defendants to limit the certified common issues to those certified in the June

²⁰ June 12, 2023 Endorsement of Justice Glustein.

14, 2019 Order. A thorough review of the emails, as attached in Schedule “C”, reveals that while there was an email from the defendants stating that they were willing to consider adding additional common issues in the context of further negotiations, there was no acceptance by Ms. Strosberg.

22. The plaintiffs deny any agreement was reached and have provided the affidavit of Sharon Strosberg in which she states that “I am certain that no such agreement was reached. I verily believe that had an agreement been reached to limit the common issues it would have been clearly set out in writing, signed by counsel and must be in an order by Justice Belobaba approving the agreement.”

23. It is also of significance that it was defence counsel and not the plaintiffs who sought to have additional common issues on contract, the *Residential Tenancies Act*, and the *Occupiers Liability Act* added to the Further Certification Order. These are many of the same issues the plaintiffs are still seeking to add. Ms. Strosberg deposes that “I was of the view that it was not useful to further delay the commencement of the opt-out period while we negotiated about additional common issues. Our focus was on getting notice to the entire class, including the Family Class members, however, we were content to bring the question [of certifying additional common issues] to the attention of Justice Belobaba.”²¹

F. Delay

24. The plaintiffs do not dispute that more than two years passed between the signing of the Further Certification Order and the service of the motion for further certification in December 2022. Ms. Strosberg provides evidence that there were changes of counsel at her firm during that time, including her own departure.²² The opt out program was also completed during this period.²³

²¹ Affidavit of Sharon Strosberg, sworn May 7, 2024 [“Strosberg Aff.”], at para. 33.

²² Strosberg Aff, para. 45.

²³ See Exhibit ‘N’ to the Edwards Affidavit, (Affidavit of Gregory D. Wigglesworth), p. 452.

Like all Canadians, counsel were in the midst of the covid epidemic. The import of whether there was irreversible prejudice to the defendants as a result of the delay is discussed below.

PART III – THE ISSUES

25. The sole issue on this preliminary motion is whether the plaintiffs should be foreclosed from proceeding with their motion seeking to amend the common issues. The defendants can of course oppose the certification of additional common issues as part of that motion so their rights remain intact. The one obstacle to hearing the motion is the defendants' allegation of an agreement between counsel to dispense with further common issues.

26. The plaintiffs submit that a motion to decide the common issues they are seeking to have certified was expressly contemplated and permitted by Justice Belobaba on not one but two discrete occasions. It is documented in the June 14, 2019 order and is documented in the minutes of the September 10, 2019 case management conference. It is abundantly clear the plaintiffs would never have agreed to just one common issue unless their rights to seek to certify the remaining ones were preserved.

27. The defendants' submissions focus on s. 8(3) of the *CPA* but this hearing is about whether there is an agreement between counsel. To the extent that there is an issue about s. 8(3) and its roll in this proceeding, the plaintiffs' submission is that their motion to add common issues is based on a court order and a judge's direction not s. 8(3). This is not a situation where a full certification motion was ever heard and decided with the plaintiffs then coming back for more. In a very real way the plaintiffs' motion, if allowed to proceed, would be the *original* certification motion which has yet to proceed because it was interrupted by the need to appoint class counsel to address a crisis. In any event, the plaintiffs submit that they meet any test under s. 8(3).

PART IV – LAW AND ARGUMENT

A. The Two Orders

28. The Further Certification Order does not expressly preclude the plaintiffs from continuing with the certification motion. It must be read in the context of the June 19 Order and the CMC minutes that reserved plaintiffs’ rights to seek additional common issues while directing the parties to agree on a further order for the **notice** program. The Further Certification Order is entirely focused on just that. It contains details regarding a notice program and an expanded class definition so that notice of certification and the right to opt out can be provided once and for all to all class members. That was the purpose of direction in the minutes of the CMC – the parties were to agree on an order that would permit a notice program and opt out, with a contested certification motion to follow. Although the minutes contemplate the later addition of the Family Class, as a practical matter, it made sense to resolve the class definition *before* notice was distributed to avoid the need for a second round of notice.

29. This reading of the two orders is in accordance with the directions to the parties recorded in the minutes of the September 2019 CMC before Justice Belobaba.²⁴ The plaintiffs were directed (para. 6) to “prepare and circulate a draft amended certification order with a notice program, the draft notice of certification and the opt out date.” The minutes go on to state that the motion to certify “additional classes and/or common issues will be scheduled in due course.”

30. In other words, Justice Belobaba was very careful to preserve the plaintiffs’ right to bring on the certification motion and seek additional common issues. The common issues the plaintiffs still seek to certify are the same ones that they sought in 2018 and which were put aside in order

²⁴ Edwards Aff., Exhibit “E”, p. 464.

to resolve the pressing questions regarding removal of class members' belongings. There has never been a contested certification motion in this action and the Court should let it proceed.

B. The Test Under s. 8(3)

31. While maintaining s 8(3) does not apply in this case to what is in effect an order allowing for the continuation of the initial certification motion, the plaintiffs submit that they meet the requirements for relief under s. 8(3).

32. S. 8(3) on its face, grants the Court the power to permit amendments to certification orders. If this was not enough, s. 12 grants the Court the power to “make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination...” These permissive provisions have both been referenced in the jurisprudence.

33. As an initial matter, it appears that the parties (and the courts) agree that there is no formal test for granting amendments pursuant to s. 8(3) of the CPA. In *Vester*, Justice Perell wrote that “Section 8(3) of the *Class Proceedings Act, 1992* confers a discretionary authority on this Court to amend a certification order, including changes to a class definition. A certification order can be amended, including by redefinition of the certified class to respond to a change in circumstances. The expansion of a class will be approved where it is fair and necessary to do so.”²⁵ In *Fanshawe*, Justice Grace wrote that “Section 8(3) of the CPA gives the court jurisdiction to amend a certification order on motion. That subsection has been the basis upon which post-certification amendments to the class definition have been sought and, on occasion, granted.”²⁶ Ultimately, Justice J. turned to the principle of *res judicata* to resolve the question, finding that, since the

²⁵ *Vester v. Boston Scientific Ltd.*, 2020 ONSC 1308 (CanLII), at para 8.

²⁶ *Fanshawe College v LG Philips LCD Co., Ltd.* [“*Fanshawe*”], 2016 ONSC 3958 (CanLII), at para 40.

plaintiff at certification had expressly disclaimed the class definition it now sought, the amendments would not be permitted.²⁷

34. In doing so, the court also noted that the “factual circumstances have not changed.”²⁸ This concern for a change in circumstances has been echoed in other cases.²⁹ These cases are all distinguishable, however, in that the amendments were either sought after a contested certification motion³⁰ or to facilitate settlement.³¹ When the courts look for ‘changed circumstances’ it is because the previous circumstances resulted in a contested certification motion and subsequent order – the court has already ruled on what is certified, and there must be a reason to revisit it. This is not that situation – there has never been a contested certification motion in this case. Instead, the court has expressly reserved the plaintiffs’ rights to continue the certification motion for the purpose of considering the common issues it has always intended to advance.

35. However, there is authority that points to a resolution here. In upholding the chambers court decision in *Fanshawe*, the divisional court pointed to the *Dutton* factors, access to justice and the objectives of the CPA, in upholding the decision.³² These provide an additional method to assess the plaintiffs’ proposal.

C. Access to Justice, Judicial Economy, and Behaviour Modification

36. Permitting the plaintiffs to move for certification of additional issues will facilitate the three purposes of the CPA. The plaintiffs seek certification of the additional claims and remedies

²⁷ *Fanshawe*, at para 53.

²⁸ *Fanshawe*, at para 53.

²⁹ *Nova Scotia (Attorney General) v. Murray*, 2017 NSCA 29 at para. 25; *Silver v. Imax*, 2013 ONSC 1667, para. 60; *Ducharme v. Solarium de Paris Inc.*, 2013 ONSC 2540, para. 19.

³⁰ *Fanshaw, Nova Scotia v. Murray, Silver v. Imax*, and *Ducharme* all involved s. 8(3) motions after a motion for certification was argued and decided.

³¹ *Vester* and *Dhillon v. Hamilton (City)*, 2008 CanLII 68146 (ON SC) involved s. 8(3) motion in the context of a settlement approval motion.

³² *Fanshawe v LG Phillips*, 2017 ONSC 2763 (CanLII), at para 19.

because they provide additional avenues for recovery and they inform the dispute between the parties. The plaintiffs are entitled to plead different causes of action in the alternative.³³ The additional common issues should be certified because they will be necessary to resolution of the liability issues in this action and provide remedies inherent to class actions such as aggregate damages.

37. As noted, the defendants plead and rely on the leases as a contractual defence to liability. Even if the additional common issues are not certified, the trial judge will be required to interpret the lease and apply it to the negligence claim, specifically whether there was a breach of the contract and whether the defendants can rely on a disclaimer buried in the standard form print on the back of the lease, while the plaintiffs will be unable to rely on the contract as a cause of action or seek to rely on violations of the *Residential Tenancies Act* which are, by statute, incorporated into the contract.³⁴ However, unless the contract questions are certified as a common issue, the trial judge's interpretation of the contract to resolve the negligence claim may not matter – at the individual issues stage for damages including property damage, each class member will be required to litigate the contract and disclaimer claim again. This will be a waste of resources for the court, the defendants and class members.

38. Similarly, the *Residential Tenancies Act* and the *Occupiers Liability Act* inform the cause of action in negligence against the defendants, define the landlords' legal obligations to maintain the units in "a good state of repair and fit for habitation and complying with health, safety, housing and maintenance standards" and provide some avenues to recovery.³⁵ The common issues trial judge will have to wade into the question in order to determine whether the statutes were breached

³³ *Tocco v. Bell Mobility Inc.*, 2019 ONSC 2916 (CanLII), at para 57.

³⁴ See, e.g., *Residential Tenancies Act*, 2006, SO 2006, c 17, ss 20, 22, 27, 29, 30.

³⁵ *Residential Tenancies Act*, 2006, SO 2006, c 17, s 20.

in order to determine the question of negligence. If he finds that they were, they should be certified otherwise individual class members may only seek recovery under them at the individual issues stage.³⁶ Again, this will be a waste of resources.

39. The plaintiffs are also seeking to certify common issues regarding aggregate and punitive damages. These common issues, if certified, can facilitate judicial efficiency by permitting the trial judge to make a baseline award of damages for loss of use and enjoyment of each class member's home which will obviate the need for many (if not most) individual issues trials. The process contemplated by the defendants in opposing these common issues would require individuals to prove all of their damages individually, prevent claims for property damage and eliminate all of the subrogated insurers' claims to recover money paid to their insureds for additional living expenses and contents damages.

40. In addition to being a horrible waste of judicial resources, and have the effect of preventing class members from advancing real claims for damages, the failure to deal with the additional common issues will prevent class members from accessing justice. The point of class actions is to resolve as many issues as possible in common in order to permit individuals with potentially small claims to have access to a chance to recover on their claims. With less to resolve at the individual issues stage, more class members will be able to recover. Conversely, should the additional issues be certified and the trial judge find against the class, the defendants will find greater access to justice by having the matters resolved once, in common, and not across dozens or hundreds of individual issues trials. As a practical matter, this Court should apply the previous court order and CMC direction or in the alternative use the powers it has under ss. 8(3) and 12 of the CPA to permit

³⁶ The contractual issues raised by the defendants include questions of whether the requirement to obtain insurance can affect recovery. *See, e.g., Deslaurier Custom Cabinets Inc. v. 1728106 Ontario Inc.*, 2016 ONCA 246 (CanLII), at para [86](#). Unless resolved on a class-wide basis, each individual tenant may need to litigate the question.

the plaintiffs to move to certify the additional issues. This case should proceed to the common issues trial with the broadest set of common issues that is reasonable in order to save time and effort later.

D. Was there an Agreement?

41. The history of this proceeding, as set out above, is relevant to the question of whether there was an agreement that certification was limited to the negligence common issues. The factual matrix is always relevant to determining whether the parties were *ad idem* and entered a contract, and subsequent conduct can also shed light on the parties' intentions at the time of the alleged agreement.³⁷ The issues which the plaintiffs now seek to certify are the same that they pled in 2018 and sought to certify in 2019. They are the same ones that the defendants knew were live in 2020.³⁸ There has been no change in the central theory of the case, and no bargain of class members' rights.

42. In this context, the factual matrix is as set out above. Plaintiffs would only agree to the first certification order on terms which granted them the right to proceed with additional common issues. Similarly, the issue of the second order arose in the context of a case management conference which expressly preserved the plaintiffs' right to pursue additional common issues. Given the factual matrix, the defendants are asking the Court to accept that in exchange for adding a family class and a notice program (directed by the court), the plaintiffs agreed to abandon all of the additional proposed common issues that they had been seeking to certify since the inception of this case and which were carefully preserved by a court order and in the minutes.

43. The facts are relatively uncontroversial and set out in the affidavits of Mr. Edwards, Ms. Strosberg, and Ms. Rourke. A review of them makes clear that the plaintiffs never accepted an

³⁷ *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912 (CanLII), at paras 48-50.

³⁸ See email of Jeremy Martin dated July 29, 2020, Edwards Aff., Exhibit H, p. 478.

offer to settle the entire certification order. To facilitate that review, the plaintiffs have prepared a brief of the emails sent in June and July 2020, taken from the record and placed in chronological order, which is appended to this factum as Schedule “C”.

44. On June 9, 2020, Ms. Strosberg sent an email attaching a proposed order.³⁹ She ended her email by saying “I look forward to hearing from you about the form and content of the draft order so we can get the opt out period going.” The order, as drafted, did not contain additional common issues, and dealt solely with the class definition and with the notice program. There is no further discussion of the order until late July when Ms. Debbie Tocco wrote to defendants’ counsel seeking their availability for a case conference. This case conference was eventually set for July 31.

45. On July 24, Defendants’ counsel responded and noted that they were “not in position to settle the draft order next week.”⁴⁰ This prompted several emails back and forth on Sunday, July 26, which can be found at Exhibit “H” to Ms. Strosberg’s affidavit.

46. On July 29, Mr. Strosberg sent a draft agenda for the call which called for the parties to “settle the form of the opt out order”.⁴¹ An hour later on the same day, Mr. Martin responded with a draft order from the defendants.⁴² In his email, Mr. Martin:

- (a) stated that the defendants required “a complete certification order settled before class members can meaningfully choose to opt out”;
- (b) acknowledged that the partial certification order “was never intended to be the final version of the Order ...”; and

³⁹ Edwards Aff., Exhibit ‘F’, p. 466

⁴⁰ Edwards Aff., Exhibit “G”, at p. 476.

⁴¹ Strosberg Aff., Exhibit I, pp. 90-91.

⁴² Edwards Aff, Exhibit H, p. 478.

- (c) proposed a certification order which included additional common issues for the *Occupiers Liability Act, Residential Tenancies Act*, in contract and potentially for punitive damages.

47. It is noteworthy that the common issues Mr. Martin offered to certify included almost all the common issues the plaintiffs now seek to certify, with the notable exception of aggregate damages. The same common issues which they now object to.

48. In the same email, Mr. Martin wrote, “if it is your intention to restrict yourself to the common issues and causes of action certified in the partial certification order, please advise and we will seek further instructions in advance of our case conference.”⁴³

49. Ms. Strosberg never responded to this email. Instead, Ms. Strosberg wrote in a separate email on July 29 (later that afternoon) that she would “send the agenda with your revisions and our draft order directly to the judge” and asked defendants counsel to “Kindly send your draft order blacklined (without the comments) as well to the judge.”⁴⁴ Ms. Tocco then wrote directly to Justice Belobaba attaching the plaintiffs’ draft order and advising him the defendants would provide an alternate draft order.⁴⁵ The version of the draft order Ms. Tocco sent to Justice Belobaba was largely the same as the Further Certification Order which was eventually signed.

50. The defendants’ position, set out at paragraphs 45-47 of their factum, is that by sending the plaintiffs’ draft order to Justice Belobaba, Ms. Strosberg somehow accepted their offer to agree to the expansion of the June 19, 2019 order to include a family class and a notice program and waived the plaintiffs’ right to seek certification of additional common issues. To the contrary, by directing

⁴³ Edwards Aff, Exhibit H, p. 478.

⁴⁴ Strosberg Aff, Exhibit “I”, p. 111

⁴⁵ Strosberg Aff., Exhibit “I”, p. 112

the defendants to provide their draft to Justice Belobaba, Ms. Strosberg was expressly *not* advising them that the plaintiffs would restrict themselves to the existing common issues. She was clearly inviting them to make a pitch for their proposed expanded settlement order to Justice Belobaba if they felt it was necessary. Ms. Strosberg gives evidence as to the intention behind her communication with Justice Belobaba:⁴⁶

I did not respond to Mr. Martin's comments that the Landlords required a 'complete' certification order. I was of the view that it was not useful to further delay the commencement of the opt-out period while we negotiated about additional common issues. Our focus was on getting notice to the entire class, including the Family Class members, however, we were content to bring the question to the attention of Justice Belobaba.

51. The case law is clear that, for there to be a contract, "there must be a meeting of minds, commonly referred to as *consensus ad idem*. The test as to whether there has been a meeting of the minds is an objective one -- would an objective, reasonable bystander conclude that, in all the circumstances, the parties intended to contract?"⁴⁷ As the defendants correctly note, "At common law, an offer can be accepted by conduct if a) the conduct was performed with a view to acceptance of the offer and not for some other motive and b) the conduct was intended to serve as acceptance of the offer in question."⁴⁸ There is no express acceptance of the offer in the record and Ms. Strosberg's conduct does not evidence any objective intent to accept the defendants' so called "offer".

52. No reasonable person observing the email exchange could conclude that there was a an offer made by the defendants to settle the order in exchange for waiving the right to pursue additional common issues but - regardless - there was no *consensus ad idem*. The reasonable person

⁴⁶ Strosberg Aff., para. 33.

⁴⁷ [UBS Securities Canada, Inc. v. Sands Brothers Canada, Ltd.](#), 2009 ONCA 328 (CanLII), at para 47.

⁴⁸ [Heydary Hamilton PC v. Bay St. Documents Inc.](#), 2012 ONCA 832 (CanLII), at para 4.

must note that Ms. Strosberg did not, in any way, accept the “offer” in the manner requested by Mr. Martin – by *advising* him of the plaintiffs’ intention to do so. Instead, she submitted the plaintiffs’ draft order to Justice Belobaba and requested the defendants to submit their own competing version of the order to Justice Belobaba for discussion *and told Justice Belobaba that the defendants would do so*. Her conduct clearly indicates that she did not agree to the suggestion of limiting the common issues. If there was, there would be no need for the competing orders to be submitted. Had she intended to accept the defendants’ ‘offer’ unilaterally through conduct, she could have simply submitted the plaintiffs order without alerting the judge that the defendants would be submitting a separate draft (although this also would be a very questionable way to accept an offer). The fact that the defendants *unilaterally* chose not to submit their own draft does not make Ms. Strosberg’s actions into acceptance.

53. The defendants accuse the plaintiffs of “appearing” to accede to the defendants’ conditions.⁴⁹ However, the evidence is clear that Ms. Strosberg did not do so. By directing that both orders be submitted to Justice Belobaba she clearly indicated that the matter was still in dispute between the parties. In their factum, when they argue that the plaintiffs accepted their offer, the defendants simply ignore Ms. Strosberg’s statement that the defendants should submit their own version of the order, saying instead that “Class counsel ... submit[ed] a draft largely in the form of the present Further Certification Order.”⁵⁰

54. The most significant factor here is an omission to the order. It does not provide for the closing of the common issues. Experienced defence counsel would have insisted on it being included in the order if it formed part of an agreement. The only other communication regarding

⁴⁹ Defendants’ factum, at para. 41.

⁵⁰ Defendants’ factum, at para. 47.

the defendants' proposal to settle all remaining common issues comes from defendants' counsel.

On July 30, Mr. Martin wrote:⁵¹

We have had the opportunity to further discuss your draft order with counsel for ESA and we can now advise that neither of us believes it will be necessary to submit a competing draft order to the Court. We do have some practical concerns about the expansion of the general class definition in the new order (those who "owned property in a Unit or had an interest in property located in a Unit"), but otherwise we are content to proceed with your draft order exclusively as the basis for our discussion tomorrow.

55. Mr. Martin followed that up with an email to Justice Belobaba stating:⁵²

After further discussion, we believe counsel have narrowed the issues for certification sufficiently that it will be unnecessary for the defendants to submit a competing draft order for your review. We are content to proceed with our friends' draft order as the basis for tomorrow's discussion.

56. Notably, Mr. Martin's email to Ms. Strosberg does not refer to any agreement between the parties to limit the common issues. Mr. Martin's email to Justice Belobaba does not state that the parties have agreed to limit the common issues in any way. In hindsight, these two emails, sent by the defendants, appear to have been intended to unilaterally document that there was some sort of *consensus ad idem* or to convert Ms. Strosberg's clear rejection of their offer into an acceptance. However, the defendants cannot accept their own offer on the plaintiffs' behalf. Their self-serving and vaguely worded emails cannot substitute for actual objective evidence of acceptance of the offer on behalf of the plaintiffs.

57. In fact, the email from Mr. Martin to Ms. Strosberg, in which he writes, "we can now advise that neither of us believes it will be necessary to submit a competing draft order ..." and "we are content to proceed with your draft order exclusively" could easily be read as unilateral acceptance

⁵¹ Edwards Aff., Exhibit "G", p. 493.

⁵² Strosberg Aff., Exhibit "J", at p. 124.

of Ms. Strosberg’s invitation in her June 9 email for the parties to agree to “the form and content of the draft order so we can get the opt out period going.”⁵³

58. In any event, the plaintiffs do not need there to have been an ‘agreement’ prior to the Further Certification Order for their interpretation to prevail. As set out above, on its own terms, the Further Certification Order does not overrule the June 9, 2019 order and the plaintiffs are still permitted to seek certification of additional common issues.

59. The defendants describe the alleged agreement as a “settlement agreement” in their written submissions. The CPA requires court approval of a ‘settlement agreement’ and admonishes that “The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members.”⁵⁴ The record does not demonstrate any such consideration either by the parties or by Justice Belobaba. As such, the ‘agreement’, if it ever existed, could not be enforceable.

60. Finally, the plaintiffs object to a passage from the defendants’ factum which characterizes Ms. Strosberg’s affidavit. At paragraph 54 of their factum, the defendants attribute a single quote (with ellipses) to Ms. Strosberg. This quote is taken from two separate passages from Ms. Strosberg’s affidavit, the portion before the ellipses is taken from paragraph 17 of Ms. Strosberg’s affidavit, while the portion *after* the ellipses is taken from paragraph 43. This is not a fair use of Ms. Strosberg’s affidavit and omits important context in both paragraphs.

61. At paragraph 17, Ms. Strosberg states the following (defendants quote highlighted):

I have read the defendants responding materials. I am unable to locate a passage in the affidavit of Meghan Rourke which expressly sets out the particulars of this so-called agreement. There does not appear to be a specific conversation, letter or email which identifies this so-called agreement. I was more actively involved in this class action than

⁵³ Edwards Aff., Exhibit “G”, p. 493; Edwards Aff., Exhibit “F”, p. 466

⁵⁴ [*Class Proceedings Act*](#), 1992, SO 1992, c 6, [s 27.1](#).

Mr. Strosberg. However, I have spoken to him about the alleged agreement. He has no knowledge of the existence of this so called agreement. Mr. Strosberg denies having agreed to this so-called agreement. He did not agree to limit the common issues. I am certain that I did not agree to restrict the plaintiffs from advancing common issues at any time that I was at SSS. Moreover, Mr. Strosberg and I would never make this agreement without reducing the agreement to writing, signing the agreement and then submitting the agreement to the Court for approval.

62. At paragraph 43, Ms. Strosberg states the following (defendants' quote highlighted):

In none of the correspondence is there mention of the alleged agreement or some sort of an agreement that the plaintiffs would not raise additional common issues in the future. I am certain that no such agreement was reached. I verily believe that had an agreement been reached to limit the common issues it would have been clearly set out in writing, signed by counsel and must be in an order by Justice Belobaba approving the agreement.

63. Neither Ms. Strosberg nor Mr. Strosberg were examined on the motion. By omitting the balance of the paragraphs, the defendants turn Ms. Strosberg's evidence about (1) what she and Mr. Strosberg agreed to or did not agree to and (2) what is evident from the record, into a statement of her 'practice' as they characterize it. This is objectionable, and Ms. Strosberg's statements must be read in their full context.

E. Prejudice

64. The defendants complain about class counsels' delay in bringing the motion for continued certification. Although this motion is being heard in 2024, the period complained of is August 27, 2020 to December 6, 2022.⁵⁵ Setting aside the controverted evidence, the period encompasses the height of the covid pandemic. Courts have acknowledged that the pandemic delayed cases "both within law firms and in the courts."⁵⁶ During this period, there were also changes in the plaintiffs' counsel team.⁵⁷ The plaintiffs do not deny that the matter has been delayed. Contrary to the

⁵⁵ Defendants' Factum at para. 30.

⁵⁶ *Tucci v Peoples Trust Company*, 2023 BCSC 2004 (CanLII), at para 12.

⁵⁷ Strosberg Aff, para. 45;

defendants' submissions, however, the plaintiffs submit that the delay has not been prejudicial. As shown in the pleadings brief, the pleadings in the third-, fourth- and fifth-party claims were being filed during this time, with some of them not filed until early 2023.⁵⁸

65. The defendants argue that they are prejudiced if leave is granted because they have “finally completed our extensive, multi-year document review process predicated on the agreed terms of the consent certification order.”⁵⁹ They add that “If leave is granted, that process will have to start over again from the beginning.”⁶⁰ With respect, leave to continue the certification motion is not required. It was ordered by Justice Belobaba in his June 19, 2019 Order and again in the minutes of the case management conference.


66. Similarly, the plaintiffs submit that there is no need for further notice to the class should additional issues be certified, which will obviate the defendants' concerns regarding reaching class members, but that is something for the Court to decide at the next stage of the proceeding.

PART V – RELIEF REQUESTED

67. The plaintiffs respectfully request that this Court dismiss the defendants' preliminary motion with costs and set a schedule for briefing and arguing the continued certification motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 19th day of September 2024

per:



Theodore P. Charney

⁵⁸ Pleadings Brief, Tab 6 of the Plaintiffs' Motion Record, p. 577.

⁵⁹ Affidavit of Megan Rourke, sworn March 2, 2024 [“Rourke Aff.”], at para. 63.

⁶⁰ Rourke Aff., at para. 64.

SCHEDULE “A” – AUTHORITIES

1. [Chu v. Parwell Investments Inc. et al.](#), 2019 ONSC 3353 (CanLII).
2. *Chu v. Parwell*, June 12, 2023 Endorsement of Justice Glustein.
3. *Chu v. Parwell*, December 7, 2023 Endorsement of Justice Glustein.
4. [Deslaurier Custom Cabinets Inc. v. 1728106 Ontario Inc.](#), 2016 ONCA 246 (CanLII)
5. [Dhillon v. Hamilton \(City\)](#), 2008 CanLII 68146 (ON SC)
6. [Ducharme v. Solarium de Paris Inc.](#), 2013 ONSC 2540
7. [Fanshawe College v LG Philips LCD Co., Ltd.](#), 2016 ONSC 3958 (CanLII)
8. [Fanshawe v LG Phillips](#), 2017 ONSC 2763 (CanLII)
9. [Heydary Hamilton PC v. Bay St. Documents Inc.](#), 2012 ONCA 832 (CanLII)
10. [Nova Scotia \(Attorney General\) v. Murray](#), 2017 NSCA 29
11. [Olivieri v. Sherman](#), 2007 ONCA 491 (CanLII)
12. [Shewchuk v. Blackmont Capital Inc.](#), 2016 ONCA 912 (CanLII)
13. [Silver v. Imax](#), 2013 ONSC 1667
14. [Tocco v. Bell Mobility Inc.](#), 2019 ONSC 2916 (CanLII)
15. [Tucci v Peoples Trust Company](#), 2023 BCSC 2004 (CanLII)
16. [UBS Securities Canada, Inc. v. Sands Brothers Canada, Ltd.](#), 2009 ONCA 328 (CanLII)
17. [Vester v. Boston Scientific Ltd.](#), 2020 ONSC 1308 (CanLII)

SCHEDULE B – LEGISLATION

1. [*Class Proceedings Act*](#), 1992, SO 1992, c 6, [ss 8, 12, 27.1](#).
2. [*Occupiers' Liability Act*](#), RSO 1990, c O.2, s [3](#).
3. [*Residential Tenancies Act*](#), 2006, SO 2006, c 17, s [20](#) ss [20, 22, 27, 29, 30](#).

SCHEDULE "C"
EXCERPTS FROM THE MOTION RECORD

INDEX

TAB	DATE AND TIME	DESCRIPTION
1	June 9, 2020 – 10:46am	Email from Sharon Strosberg to Ted Frankel and Jeremy Martin. Edwards Affidavit, Exhibit "F" p. 466
2	July 24, 2020 – 5:40pm	Email from Ted Frankel to Debbie Tocco, Jeremy Martin, Stephanie Kerzner, David Young, Glenn Zakaib and David Elman. Edwards Affidavit, Exhibit "G", page 476
3	July 26, 2020 – 1:18pm	Email from Harvey Strosberg to Ted Frankel, Strosberg Affidavit, Exhibit "H", page 85
4	July 29, 2020 – 9:47am	Email from Harvey Strosberg to Jeremy Martin, Ted Frankel, Stephanie Kerzner, David Young, Glenn Zakaib and David Elman, Strosberg Affidavit, Exhibit "I", page 89
5	July 29, 2020 – 11:03am	Email from Jeremy Martin to Harvey Strosberg, Ted Frankel, Stephani Kerzner, David Young, Glenn Zakaib and David Elman, Edwards Affidavit, Exhibit "G", page 478
6	July 29, 2020 – 11:34am	Email from David Elman to Jeremy Martin, Harvey Strosberg, Ted Frankel, Stephanie Kerzner, David Young and Glenn Zakaib, Strosberg Affidavit, Exhibit "I", page 109
7	July 29, 2020 – 1:56pm	Email from Sharon Strosberg to Jeremy Martin, Ted Frankel, David Elman, David Young and Glenn Zakaib, Strosberg Affidavit, Exhibit "I", page 111
8	July 29, 2020 – 2:37pm	Email from Debbie Tocco to Mr. Justice Edward Belobaba, Strosberg Affidavit, Exhibit "I", page 112

9	July 30, 2020 – 2:12pm	Email from Jeremy Martin to Sharon Strosberg, Ted Frankel, David Elman, David Young and Glenn Zakaib, Edwards Affidavit, Exhibit “G”, page 493
10	July 30, 2020 – 2:22pm	Email from Jeremy Martin to Debbie Tocco and Mr. Justice Edward Belobaba, Strosberg Affidavit, Exhibit “J”, page 124
11	July 30, 2020 – 2:48pm	Email from Mr. Justice Edward Belobaba to Jeremy Martin and Debbie Tocco, Strosberg Affidavit, Exhibit “J”, page 126
12	July 30, 2020 – 3:08pm	Email from Mr. Justice Edward Belobaba to Harvey Strosberg, Jeremy Martin and Debbie Tocco, Edwards Affidavit, Exhibit “G”, page 490
13	July 31, 2020 – 11:07am	Email from Sharon Strosberg to Harvey Strosberg, Jeremy Martin and Debbie Tocco, Strosberg Affidavit, Exhibit “K”, page 128

From: [Sharon Strosberg](#)
To: [Frankel, Ted](#); jmartin@cassels.com
Cc: [Harvey T. Strosberg KC](#); [Ted Charney](#); [Marietta Underwood](#)
Subject: Parliament
Date: Tuesday, June 9, 2020 10:46:45 AM
Attachments: [image139695.png](#)
[image796915.png](#)
[CLASS-#1657726-v7-DRAFT_ORDER_\(CERTIFICATION\).DOC](#)

Ted and Jeremy:

I attach the draft order that we would like to put before Justice Belobaba with your consent.

In addition, further to the call we had 3 weeks ago:

1. Please advise if you have instructions to indemnify us in the event that we agree to add Hydro as a defendant;
2. Please provide us the information regarding the other named defendants' ownership, operation or involvement in 650 Parliament (I sent you the specific correspondence immediately following our call)
3. Please send us the claim that you issued against Daram Electrical and any other parties you sued as a result of the fire; and
4. Any other information you found out that is relevant further to the meeting with your experts following our call.

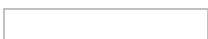
I believe we provided all of the information that we undertook to give you on the call.

To respond to your email from yesterday regarding the discrepancy between the subrogated claim spreadsheet we sent you and the correspondence from Square One Insurance, I believe that the answer is that they have not registered their claims with us. We have asked them to do so and will continue to update you on that information as required.

I look forward to hearing from you about the form and content of the draft order so we can get the opt out period going.

Thank you and stay safe.

Sharon



Tel: 519.561.6244
 Fax: 866.316.5308
 Email: sharon@strosbergco.com



1561 Ouellette Avenue | Windsor, ON N8X 1K5

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail

from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

Draft 3 Thursday, June 4, 2020 @ 1:52 PM
--

Court File No.: CV-18-00604410-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE)	DAY, THE
)	
EDWARD BELOBABA)	DAY OF JUNE, 2020.
)	

B E T W E E N:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB)
INVESTMENTS LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Further Certification Order)

THIS MOTION, made by the plaintiffs for certification of this action as a class proceeding, was heard this day in writing.

ON READING the motion record filed,

AND ON READING the partial certification order dated June 13, 2019,

1. FOR THE PURPOSES OF THIS FURTHER CERTIFICATION ORDER, the following definitions apply:

- (a) “**650 Parliament**” means the rental apartment buildings located at **650 Parliament Street**, Toronto, which consists of a north tower and a south tower;
- (b) “**Buildings**” means the premises municipally described as 650 Parliament Street, Toronto;
- (c) “**Class**” and “**Class Members**” means all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a **Unit** or was ordinarily resident in a **Unit**, or was present in a **Unit** or owned property in a **Unit** or had an interest in property located in a **Unit**;
- (d) “**Class Counsel**” means Strosberg Sasso Sutts LLP and Charney Lawyers PC;
- (e) “**ESA**” means Electrical Safety Authority; and
- (f) “**FLA**” means the *Family Law Act*, R.S.O. 1990, c.F.3;
- (g) “**Family Class**” and “**Family Class Member**” means the living partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member**;
- (h) “**June 13, 2019 Order**” means the certification order made by Justice Belobaba;
- (i) “**Notice**” means the notice of certification of this action as a class proceeding generally in the form attached as Schedule A;
- (j) “**Notice Program**” means the method of distributing the **Notice**;
- (k) “**Opt-Out Date**” means 5:00 p.m. eastern time on September 3, 2020, and
- (l) “**Unit**” means an apartment or other utilizable space at the **Buildings**.

2. THIS COURT DECLARES that by the June 13, 2019 order, this action was certified as a class proceeding against Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited and that Clement Chu and Nahom Abadi were appointed representative plaintiffs of the Class which was defined as:

all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a Unit or was ordinarily resident in a Unit, or was present in a Unit; or owned property or had in interest in property located in a Unit at the premises municipally described as 650 Parliament Street, Toronto, Ontario.

3. THIS COURT ORDERS that the Family Class is defined as the living partner, spouse, child, grandchild, parent, grandparent or sibling of a Class Member who has not opted out of this class action.

4. THIS COURT ORDERS that Ida Fabriga-Chu is hereby appointed as the representative plaintiff of the Family Class.

5. THIS COURT ORDERS that the Notice, generally in the form attached as Schedule “A”, is hereby approved.

6. THIS COURT ORDERS that the Class shall be given notice, on or before July 3, 2020 of the certification of this class action in the following manner (the “Notice Program”):

- (a) by Class Counsel posting the Notice on the website www.strosbergco.com/class-actions/parliament/;

- (b) by Class Counsel sending the Notice by email to every person who registered with Class Counsel and provided a valid e-mail address; and
- (c) by the defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, at their own expense:
 - (i) placing the Notice under each door of each Unit in the Buildings at 650 Parliament;
 - (ii) sending the Notice by regular mail to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided a forwarding address;
 - (iii) sending the Notice by email to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided an email address; and
 - (iv) until September 3, 2020, posting the Notice at the Emergency Response Centre located at 260 Wellesley St. E.; in the lobby and elevators in the Buildings at 650 Parliament; and on the website WPSQ.com.

7. THIS COURT ORDERS THAT on or before July 15, 2020, Class Counsel and counsel for Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, must file with the court an affidavit that they have complied with the notice requirements set out in paragraph 6 of this order.

8. THIS COURT ORDERS that a Class Member may only opt out of this action by sending an election to opt out, by ordinary mail, fax, email or courier which election must be received or post marked on or before the Opt-Out Date, and must be signed by the Class Member or such Class Members' authorized representative, stating that the Class Member opts out of this action and also stating the Class Member's full name, address, telephone number and birth date:

BY REGULAR MAIL TO:
Gregory D. Wigglesworth
Kirwin Partners LLP
423 Pelissier Street
Windsor, Ontario N9A 4L2

Attention: 650 Parliament Street Fire Class Action

or BY FAX TO:
519.790.0034

or BY EMAIL TO:
parliament@kirwinpartners.com, Attention: Gregory Wigglesworth
subject: 650 Parliament Street Fire Class Action

9. THIS COURT ORDERS that no Class Member may opt out of this action after September 3, 2020 at 5:00 p.m. eastern time on the Opt-Out Date, subject to further order of the Court.

10. THIS COURT ORDERS that if a Class Member opts out, the related Family Class Members shall be deemed to have also opted out of this class action.

11. THIS COURT ORDERS that a Family Class Member may not opt out of this class action unless the related Class Member has validly and timely opted out.

12. THIS COURT ORDERS that no person may opt out a minor or a mentally incapable member of the Class from this action without the permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.

13. THIS COURT ORDERS that Gregory Wigglesworth shall, on or before September 30, 2020, report to the Court and to counsel for the parties by affidavit and list the names and addresses of those persons, if any, who have opted out of this action.

14. THIS COURT ORDERS that the defendants, Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, shall pay the costs of Gregory Wigglesworth in the amount of \$2500 plus reasonable disbursements plus HST on or before September 30, 2020.

#1657726v7

JUSTICE BELOBABA

CLEMENT CHU et al.

Plaintiffs

vs. PARWELL INVESTMENTS INC. et al.

Defendants

Court File No. CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(Certification)**

STROSBERG SASSO SUTTS LLP
Lawyers
1561 Ouellette Avenue
Windsor ON N8X 1K5

HARVEY T. STROSBERG Q.C./LSO #126400
SHARON STROSBERG/LSO #44233W
Tel: 519.561.6228 / 519.561.6244
Fax: 519.561.6203

CHARNEY LAWYERS
#602-151 Bloor St. W.
Toronto, Ontario M5S 1S4

THEODORE P. CHARNEY/LSO #26853E
TINA YANG/LSO #60010N
Tel: 416-964-7950
Fax: 416-964-7416

Lawyers for the plaintiffs

From: [Frankel, Ted](#)
To: [Debbie Tocco](#); [Martin, Jeremy](#); [Kerzner, Stephanie](#); [David Young](#); [GZakaib@blg.com](#); [David Elman \(DElman@blg.com\)](#)
Cc: [Harvey T. Strosberg KC](#); [Sharon Strosberg](#); [Marietta Underwood](#)
Subject: RE: 650 Parliament Street Fire Class Action
Date: Friday, July 24, 2020 5:40:15 PM
Attachments: [image002.png](#)
[image003.png](#)
[image001.png](#)
[image006.png](#)

Dear Counsel,

We're happy to meet for a teleconference on July 31st to:

- a. Update His Honour as to the status of the re-occupancy of the building;
- b. Obtain a schedule for amending the partial certification order; and
- c. Any other matters that counsel wish to raise.

We are continuing to work through your draft certification order and have concerns about the viability of proceeding under the order as drafted, but look forward to discussing with a view to resolving those concerns collaboratively.

As such, we are not in position to settle the draft order next week.

I invite counsel for ESA defendants to share their thoughts as well.

Have a nice weekend and regards,

Ted

 **TED FRANKEL** LL.B., Q.Arb
t: +1 416 642 7469
e: tfrankel@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
 Suite 2100, Scotia Plaza, 40 King St. W.
 Toronto, ON M5H 3C2 Canada

From: Debbie Tocco <dtocco@strosbergco.com>

Sent: Friday, July 24, 2020 2:18 PM

To: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>

Cc: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>

Subject: 650 Parliament Street Fire Class Action


Counsel,

Justice Belobaba is available for a case management teleconference July 28 and 31, 2020 at 10 am to settle the draft consent certification order. We anticipate the teleconference will not take more than 30 minutes.

Please provide us with your availability. Our preference is for the case management teleconference to proceed on July 31, 2020.

Thank you,

Debbie


 Tel: [519.561.6296](tel:519.561.6296)
 Fax: [866.316.5308](tel:866.316.5308)
 Email: dtocco@strosbergco.com


 1561 Ouellette Avenue | Windsor, ON N8X 1K5

information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

From: Harvey T. Strosberg Q.C.
Sent: Sunday, July 26, 2020 1:18 PM
To: Frankel, Ted
Cc: Martin, Jeremy
Subject: RE: 650 Parliament Street Fire Class Action

If we have your comments before hand, we can discuss and understand your position. Otherwise, probability, there will be no agreement and another call will be necessary. It better to understand your position before call. We will check with David Young's office for Thursday

Harvey T. Strosberg Q.C. Tel: 519.561.6228
Fax: 866.316.5308
Email: harvey@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Frankel, Ted <tfrankel@cassels.com>
Sent: Sunday, July 26, 2020 1:07 PM
To: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Cc: Martin, Jeremy <jmartin@cassels.com>
Subject: RE: 650 Parliament Street Fire Class Action

1. If the call is tomorrow, **no**, we won't send comments beforehand. Why do you need our comments before a call just amongst counsel?
2. We are ok with you booking July 31st with Justice Belobaba but we are not aware of the availability of ESA's counsel or David Young. We trust your office will look into that before booking

Cassels

TED FRANKEL LL.B., Q.Arb
t: +1 416 642 7469
e: tfrankel@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Sent: Sunday, July 26, 2020 1:01 PM
To: Frankel, Ted <tfrankel@cassels.com>
Subject: RE: 650 Parliament Street Fire Class Action

Wonderful, so I presume you'll send your comments before the call. Judge B, has 30 minutes on July 26 or July 31. I suggest we choose July 31 for the conference with him and, in the interim, we should discuss the draft.

Harvey T. Strosberg Q.C.

Tel: 519.561.6228

Fax: 866.316.5308

Email: harvey@strosbergco.com

Strosberg Sasso Sutts LLP

LAWYERS

1561 Ouellette Avenue | Windsor, ON N8X 1K5

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Frankel, Ted <tfrankel@cassels.com>

Sent: Sunday, July 26, 2020 12:58 PM

To: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>

Subject: RE: 650 Parliament Street Fire Class Action

Agreed – that would be the objective of the call

Cassels | **TED FRANKEL** LL.B., Q.Arb
t: +1 416 642 7469
e: tfrankel@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>

Sent: Sunday, July 26, 2020 12:56 PM

To: Frankel, Ted <tfrankel@cassels.com>

Cc: Debbie Tocco <dtocco@strosbergco.com>; Martin, Jeremy <jmartin@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>; Ted Charney <tcharney@charneylawyers.com>; Debbie Tocco <dtocco@strosbergco.com>

Subject: RE: 650 Parliament Street Fire Class Action

Ted

All day Monday is ok for me.

But, as I wrote: "We can't have a collaborative process without your input/viewpoint."

Please tell us what your problems are with our the draft order.

harvey

Harvey T. Strosberg Q.C.

Tel: 519.561.6228

Fax: 866.316.5308

Email: harvey@strosbergco.com

Strosberg Sasso Sutts LLP

LAWYERS

1561 Ouellette Avenue | Windsor, ON N8X 1K5

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Frankel, Ted <tfrankel@cassels.com>

Sent: Sunday, July 26, 2020 12:51 PM

To: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>

Cc: Debbie Tocco <dtocco@strosbergco.com>; Martin, Jeremy <jmartin@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>; Ted Charney <tcharney@charneylawyers.com>
Subject: RE: 650 Parliament Street Fire Class Action

Harvey,

Happy to have a call this week.

Please advise as to your availability.

Regards,
Ted

Cassels | **TED FRANKEL** LL.B., Q.Arb
t: +1 416 642 7469
e: tfrankel@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Sent: Sunday, July 26, 2020 12:45 PM
To: Frankel, Ted <tfrankel@cassels.com>
Cc: Debbie Tocco <dtocco@strosbergco.com>; Martin, Jeremy <jmartin@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>; Ted Charney <tcharney@charneylawyers.com>
Subject: RE: 650 Parliament Street Fire Class Action

Ted,
Sharon sent the draft order to you team on **June 5, 2020** at 1047AM.
We haven't got a reply from your team in more than 6 weeks.
So, PLEASE, as matter of priority, tell us what your suggested changes.
I don't wish to complain to the judge.
We can't have a collaborative process without your input/viewpoint.
harvey

Harvey T. Strosberg Q.C.

Tel: 519.561.6228
Fax: 866.316.5308
Email:harvey@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Harvey T. Strosberg Q.C.
Sent: Wednesday, July 29, 2020 9:47 AM
To: jmartin@casselsbrock.com; tfrankel@CasselsBrock.com; skertzner@cassels.com; David Young; GZakaib@blg.com; David Elman (DElman@blg.com)
Cc: Sharon Strosberg; Marietta Underwood
Subject: 650 Parliament Street Fire Class Action
Attachments: AGENDA_FOR_CASE_TELECONFERENCE_JULY_31_2020.pdf

Attached is our draft agenda for the case conference July 31, 2020.
Please send me your comments by 11 am as his honour asked for the agenda yesterday.
harvey

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB) INVESTMENTS
LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AGENDA FOR CASE TELECONFERENCE
(Friday, July 31, 2020 at 10 am)**

1. Settle the form of the opt out order. Attached is the plaintiffs' version of the order. The defendants' version will follow.

DRAFT

Court File No.: CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) DAY, THE
)
EDWARD BELOBABA) DAY OF JUNE, 2020.
)

B E T W E E N:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB)
INVESTMENTS LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Further Certification Order)**

THIS MOTION, made by the plaintiffs for certification of this action as a class proceeding, was heard this day in writing.

ON READING the motion record filed,

AND ON READING the partial certification order dated June 13, 2019,

I. FOR THE PURPOSES OF THIS FURTHER CERTIFICATION ORDER,
the following definitions apply:

- (a) “**650 Parliament**” means the rental apartment buildings located at **650 Parliament Street**, Toronto, which consists of a north tower and a south tower;
- (b) “**Buildings**” means the premises municipally described as 650 Parliament Street, Toronto;
- (c) “**Class**” and “**Class Members**” means all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a **Unit** or was ordinarily resident in a **Unit**, or was present in a **Unit** or owned property in a **Unit** or had an interest in property located in a **Unit**;
- (d) “**Class Counsel**” means Strosberg Sasso Sutts LLP and Charney Lawyers PC;
- (e) “**ESA**” means Electrical Safety Authority; and
- (f) “**FLA**” means the *Family Law Act*, R.S.O. 1990, c.F.3;
- (g) “**Family Class**” and “**Family Class Member**” means the living partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member**;
- (h) “**June 13, 2019 Order**” means the certification order made by Justice Belobaba;
- (i) “**Notice**” means the notice of certification of this action as a class proceeding generally in the form attached as Schedule A;
- (j) “**Notice Program**” means the method of distributing the **Notice**;
- (k) “**Opt-Out Date**” means 5:00 p.m. eastern time on September 3, 2020, and
- (l) “**Unit**” means an apartment or other utilizable space at the **Buildings**.

2. THIS COURT DECLARES that by the June 13, 2019 order, this action was certified as a class proceeding against Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited and that Clement Chu and Nahom Abadi were appointed representative plaintiffs of the Class which was defined as:

all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a Unit or was ordinarily resident in a Unit, or was present in a Unit; or owned property or had in interest in property located in a Unit at the premises municipally described as 650 Parliament Street, Toronto, Ontario.

3. THIS COURT ORDERS that the Family Class is defined as the living partner, spouse, child, grandchild, parent, grandparent or sibling of a Class Member who has not opted out of this class action.

4. THIS COURT ORDERS that Ida Fabriga-Chu is hereby appointed as the representative plaintiff of the Family Class.

5. THIS COURT ORDERS that the Notice, generally in the form attached as Schedule "A", is hereby approved.

6. THIS COURT ORDERS that the Class shall be given notice, on or before September 1, 2020 of the certification of this class action in the following manner (the "Notice Program"):

- (a) by Class Counsel posting the Notice on the website www.strosbergco.com/class-actions/parliament/;

- (b) by Class Counsel sending the Notice by email to every person who registered with Class Counsel and provided a valid e-mail address; and
- (c) by the defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, at their own expense:
 - (i) placing the Notice under each door of each Unit in the Buildings at 650 Parliament;
 - (ii) sending the Notice by regular mail to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided a forwarding address;
 - (iii) sending the Notice by email to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided an email address; and
 - (iv) until September 3, 2020, posting the Notice at the Emergency Response Centre located at 260 Wellesley St. E.; in the lobby and elevators in the Buildings at 650 Parliament; and on the website WPSQ.com.

7. THIS COURT ORDERS THAT on or before September 15, 2020, Class Counsel and counsel for Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, must file with the court an affidavit that they have complied with the notice requirements set out in paragraph 6 of this order.

8. THIS COURT ORDERS that a Class Member may only opt out of this action by sending an election to opt out, by ordinary mail, fax, email or courier which election must be received or post marked on or before the Opt-Out Date, and must be signed by the Class Member or such Class Members' authorized representative, stating that the Class Member opts out of this action and also stating the Class Member's full name, address, telephone number and birth date:

BY REGULAR MAIL TO:
Gregory D. Wrigglesworth
Kirwin Partners LLP
423 Pelissier Street
Windsor, Ontario N9A 4L2

Attention: 650 Parliament Street Fire Class Action

or BY FAX TO:
519.790.0034

or BY EMAIL TO:
parliament@kirwinpartners.com, Attention: Gregory Wrigglesworth
subject: 650 Parliament Street Fire Class Action

9. THIS COURT ORDERS that no Class Member may opt out of this action after October 15, 2020 at 5:00 p.m. eastern time on the Opt-Out Date, subject to further order of the Court.

10. THIS COURT ORDERS that if a Class Member opts out, the related Family Class Members shall be deemed to have also opted out of this class action.

11. THIS COURT ORDERS that a Family Class Member may not opt out of this class action unless the related Class Member has validly and timely opted out.

12. THIS COURT ORDERS that no person may opt out a minor or a mentally incapable member of the Class from this action without the permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.

13. THIS COURT ORDERS that Gregory Wrigglesworth shall, on or before October 30, 2020, report to the Court and to counsel for the parties by affidavit and list the names and addresses of those persons, if any, who have opted out of this action.

14. THIS COURT ORDERS that the defendants, Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, shall pay the costs of Gregory Wrigglesworth in the amount of \$2500 plus reasonable disbursements plus HST on or before November 30, 2020.

JUSTICE BELOBABA

CLEMENT CHU et al.

Plaintiffs

vs. PARWELL INVESTMENTS INC. et al.

Defendants

Court File No. CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(Certification)**

STROSBERG SASSO SUTTS LLP
Lawyers
1561 Ouellette Avenue
Windsor ON N8X 1K5

HARVEY T. STROSBERG Q.C./LSO #126400
SHARON STROSBERG/LSO #44233W
Tel: 519.561.6228 / 519.561.6244
Fax: 519.561.6203

CHARNEY LAWYERS
#602-151 Bloor St. W.
Toronto, Ontario M5S 1S4

THEODORE P. CHARNEY/LSO #26853E
TINA YANG/LSO #60010N
Tel: 416-964-7950
Fax: 416-964-7416

Lawyers for the plaintiffs

From: [Martin, Jeremy](#)
To: [Harvey T. Strosberg KC](#); [Frankel, Ted](#); [Kerzner, Stephanie](#); [David Young](#); [GZakaib@blg.com](#); [David Elman \(DElman@blg.com\)](#)
Cc: [Sharon Strosberg](#); [Marietta Underwood](#)
Subject: RE: 650 Parliament Street Fire Class Action
Date: Wednesday, July 29, 2020 11:03:01 AM
Attachments: [image002.png](#)
[image001.png](#)
[image004.png](#)
[Draft Certification Order \(Parwell\) \(Notes\).DOCX](#)

Good morning Harvey,

Attached is our draft Order. It includes highlighted notes for your reference, describing any meaningful changes we have made to your draft and why we have done so for the purposes of discussion. We will forward an identical clean copy to His Honour, excluding those notes. We disagree that the agenda item can be properly characterized as “settling the opt-out order”. We must have a complete certification order settled before class members can meaningfully choose to opt out. The partial certification order was agreed to as an expedient in a crisis and was never intended to be the final version of the Order that will be certified and relied on at the common issues trial. The existing partial certification order is not adequate for that purpose, as I think you would have to agree given your certification materials.

That said, if it is your intention to restrict yourself to the common issues and causes of action certified in the partial certification order, please advise and we will seek further instructions in advance of our case conference.

I propose this as the agenda:

1. Update the Court on the status of the reoccupancy of 650 Parliament.
2. Set a timetable for a motion to amend the partial certification order.
3. Discuss proposed draft certification orders.

Best,



JEREMY MARTIN

t: +1 416 860 2929

e: jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com

Suite 2100, Scotia Plaza, 40 King St. W.
 Toronto, ON M5H 3C2 Canada

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>

Sent: Wednesday, July 29, 2020 9:47 AM

To: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>

Cc: Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>

Subject: 650 Parliament Street Fire Class Action

Attached is our draft agenda for the case conference July 31, 2020.

Please send me your comments by 11 am as his honour asked for the agenda yesterday.

harvey



Tel: [519.561.6228](tel:519.561.6228)

Fax: [866.316.5308](tel:866.316.5308)

Email: harvey@strosbergco.com



1561 Ouellette Avenue | Windsor, ON N8X 1K5

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

Court File No. CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE), THE
)	
EDWARD BELOBABA)	DAY OF AUGUST, 2020

B E T W E E N:

(Court Seal)

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

- and -

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB)
INVESTMENTS LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Complete Certification)**

THIS MOTION, made by Clement Chu, Nahom Abadi and Ida Fabriga-Chu, for final certification of this action as a class proceeding, was heard this day by teleconference, with the parties attending remotely and the Court attending at the court house, 393 University Avenue, 10th Floor, Toronto ON, M5G 1E6.

ON READING the motion record filed;

AND UPON READING the partial certification order dated June 13, 2019;

AND UPON BEING ADVISED of the consent of the parties;

1. **THIS COURT ORDERS** that in this order, the following definitions shall apply:
 - (a) **“650 Parliament”** or the **“Buildings”** means the rental apartment buildings located at the premises municipally described as 650 Parliament Street, Toronto, which are comprised of a north tower and a south tower;
 - (b) **“Class”** and **“Class Members”** means all persons, excluding the defendants, their employees, agents, officers or directors, who at the moment of the ignition of the fire on August 21, 2018, rented a **Unit** or were ordinarily resident in a **Unit**, or were present in a **Unit**, or who stored property or vehicles in a **Unit**, and who fall into one of three subclasses: the Tenant Class, the Occupant Class, or the Storage Class, as defined herein; [NTD: Because the defendants owe different contractual and statutory duties to different members of the class (and they owe different duties to the defendants) success for one class member as proposed will not mean success for all, and the common issues may be answered differently for various class members. As a result, given the alternatives – dividing into subclasses or drafting 3x as many common issues on liability – we propose to proceed with three exhaustive subclasses in addition to the Family Class]
 - (c) **“Class Counsel”** means Strosberg Sasso Sutts LLP and Charney Lawyers PC;
 - (d) **“ESA”** means Electrical Safety Authority; and
 - (e) **“FLA”** means the *Family Law Act*, R.S.O. 1990, c.F.3;
 - (f) **“Family Class”** and **“Family Class Member”** means the living partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member**;
 - (g) **“Landlord”** means the defendant 650 Parliament Residences Limited;
 - (h) **“Notice”** means the notice of certification of this action as a class proceeding generally in the form attached as Schedule “A”;
 - (i) **“Notice Program”** means the method of distributing the **Notice**;

- (j) **“Occupant Class”** means all Class Members, excluding the Tenant Class members, who at the moment of ignition of the fire on August 21, 2018, were ordinarily resident in a **Unit**, or were subtenants in a **Unit**, or were otherwise present in a **Unit**;
- (k) **“Opt-Out Date”** means 5:00 p.m. Eastern Time on September 3, 2020;
- (l) **“Partial Certification Order”** means the partial certification order in this proceeding made by Justice Belobaba;
- (m) **“Storage Class”** means all Class Members, who at the moment of ignition of the fire on August 21, 2018 were neither members of the Tenant Class nor the Occupant Class but who had paid rent to the defendants to store items in a locker or storage area, or to park a vehicle, at 650 Parliament, and who had at that moment property stored or vehicles parked on the leased premises pursuant to that arrangement; [NTD: Does such a class exist, to the plaintiffs’ knowledge? We will inquire as well.]
- (n) **“Tenant Class”** means all Class Members, who at the moment of ignition of the fire on August 21, 2018, were “tenants” under the meaning of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (“**RTA**”) personally or through joint tenancy; and
- (o) **“Unit”** means an apartment, storage space or parking space at the **Buildings** rented from one of more of the defendants.

2. **THIS COURT ORDERS** this action be certified as a class proceeding against the defendants.

3. **THIS COURT ORDERS** that Clement Chu and Nahom Abadi be, and are hereby, appointed as representative plaintiffs of the Class.

4. **THIS COURT ORDERS** that Ida Fabriga-Chu be, and is hereby, appointed as representative plaintiff of the Family Class.

5. **THIS COURT ORDERS** that the following common issues (“**Common Issues**”) are certified for the purposes of this proceeding:

-2-

- 1) Did one or more of the defendants other than the ESA owe a duty of care to the Class in relation to the design, construction, operation, maintenance and monitoring of the Buildings, including the electrical systems? If so, which defendants?
- 2) If the answer to Question 1 is “yes”, did one or more of those defendants breach the standard of care expected of them in relation to the design, construction, operation, maintenance and monitoring of the Buildings, including the electrical systems? If so, which defendants, when, and how?
- 3) Did the ESA owe a duty of care to the Class in relation to the regulation, oversight, maintenance and monitoring of the electrical systems at the Buildings?
- 4) If the answer to Question 3 is “yes”, did the ESA breach the standard of care expected of it in relation to the regulation, oversight, maintenance and monitoring of the electrical systems at the Building?
- 5) If the answers to Questions 2 or 4 are “yes”, what degree of fault should be assigned to each defendant?
- 6) Is one or more of the defendants other than the ESA an “occupier” of the Buildings within the meaning of Section 1 of the *Occupiers’ Liability Act*, R.S.O. 1990, c. O.2 (“**OLA**”)? If so, which defendants?
- 7) If the answer to Question 6 is “yes”, did one or more of the occupier defendants breach the duty to the Class pursuant to Section 3 of the OLA

-2-

to take such care as in all the circumstances of the case is reasonable to see that persons entering into the Buildings, and the property brought into the Buildings by those persons, are reasonably safe while in the Buildings? If so, which defendants, when, and how?

- 8) Did the Landlord fail to comply with its obligations to the Tenant Class:
- (i) Pursuant to Section 20(1) of the *RTA* to maintain the Buildings, including the Units, in a good state of repair and fit for habitation?
 - (ii) [NTD: If relying on the latter half of Section 20(1), please specify the health, safety, housing and/or maintenance codes upon which you intend to rely]
 - (iii) Pursuant to Section 22 of the *RTA*, not to substantially interfere at any time with the Class Members' reasonable enjoyment of the Buildings, including the Units, for all usual purposes?
- 9) Was it an express or implied term of the rental contracts/tenancy agreements (the "**Contracts**") that the Landlord had with Tenant Class members that the Landlord would maintain the Buildings in a good state of repair and fit for habitation? [NTD: See note above]
- 10) If the answer to Question 9 is "yes", did the Landlord breach the Contracts, or any of them? If so, how?

-2-

- 11) [NTD: Common issue concerning nuisance removed. Even if the material facts pleaded are assumed to be true, damage from fire caused by negligence cannot disclose a viable cause of action in nuisance]
- 12) [NTD: Common issue concerning *Rylands v. Fletcher* removed as there is no allegation of a substance of special danger having been brought on to the property, or the property being put to any non-natural use; unintentionally set fires are exempt from the rule in *Rylands v. Fletcher*]
- 13) [NTD: Common issue concerning aggregate damages removed as there will remain numerous individual issues of fact and/or law at the conclusion of the common issues trial]
- 14) Should the defendants, or any of them, pay punitive damages to the Class and/or Family Class? If so, in what amount? [NTD: Please specify the conduct that you intend to upon to establish some basis in fact for this form of relief being available to the class]
- 15) Was it an express or implied term of the Contracts that the Tenant Class members would purchase and maintain a current policy of insurance? If so, should the damages of Tenant Class members in breach of that obligation be reduced by the amount of insurance mandated by the Contract?
- 16) Can the cause of the fire on August 21, 2018 be determined? If so, what was the cause of the fire?

6. **THIS COURT ORDERS** that the class definitions of the Tenant Class, Occupier Class, Storage Class and Family Class be as set out in Paragraph 1, above.

7. **THIS COURT ORDERS** that the Notice, generally in the form attached as Schedule "A", is hereby approved.

8. **THIS COURT ORDERS** that the Class shall be given notice, on or before August 21, 2020 of the certification of this class action in the following manner (the "**Notice Program**") by:

- (a) Class Counsel posting the Notice on the website www.strosbergco.com/class-actions/parliament/;
- (b) Class Counsel sending the Notice by email to every person who registered with Class Counsel and provided a valid e-mail address; and by
- (c) The non-ESA defendants, at their own expense:
 - (i) placing the Notice under each door of each Unit in the Buildings at 650 Parliament;
 - (ii) in the case of Class Members who were tenants of 650 Parliament on August 21, 2018 but who have since terminated their tenancies, sending the Notice by regular mail to those who provided a forwarding address;
 - (iii) sending the Notice by email to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided an email address; and
 - (iv) until September 3, 2020, posting the Notice in the lobby and elevators in the Buildings at 650 Parliament; and on the website WPSQ.com. [NTD: Reference to the Response Office removed as it will be closed by this date]

-2-

9. **THIS COURT ORDERS** that on or before July 15, 2020, Class Counsel and counsel for the non-ESA defendants must file with the court an affidavit that they have complied with the notice requirements set out in Paragraph 8 of this Order.

10. **THIS COURT ORDERS** that a Class Member may only opt out of this action by sending an election to opt out, by ordinary mail, fax, email or courier which election must be received or post marked on or before the Opt-Out Date, and must be signed by the Class Member or such Class Members' authorized representative, stating that the Class Member opts out of this action and also stating the Class Member's full name, address, telephone number and birth date:

BY REGULAR MAIL TO:
Gregory D. Wigglesworth
Kirwin Partners LLP
423 Pelissier Street
Windsor, Ontario N9A 4L2

Attention: 650 Parliament Street Fire Class Action

-or-

BY FAX TO:
519.790.0034

-or-

BY EMAIL TO:
parliament@kirwinpartners.com,
Attention: Gregory Wigglesworth
Subject: 650 Parliament Street Fire Class Action

11. **THIS COURT ORDERS** that no Class Member may opt out of this action after 5:00 PM Eastern Time on the Opt-Out Date, subject to further order of the Court.

12. **THIS COURT ORDERS** that if a Class Member opts out of this action, the related Family Class Members shall be deemed to have also opted out of this class action.
13. **THIS COURT ORDERS** that a Family Class Member may not opt out of this class action unless the related Class Member has opted out in a valid and timely fashion.
14. **THIS COURT ORDERS** that no person may opt out a minor or a mentally incapable member of the Class from this action without the permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.
15. **THIS COURT ORDERS** that Gregory Wrigglesworth shall, on or before September 30, 2020, report to the Court and to counsel for the parties by affidavit and list therein the names and addresses of those persons, if any, who have opted out of this action.
16. **THIS COURT ORDERS** that the non-ESA defendants shall pay the costs of Gregory Wrigglesworth on a joint and several basis in the amount of \$2,500 plus reasonable disbursements plus HST on or before September 30, 2020.
17. **THIS COURT DECLARES** that this Complete Certification Order supersedes the Partial Certification Order.
18. **THIS COURT MAKES** no order as to costs.

(Signature of Judge)

CLEMENT CHU et al.
Plaintiffs

and PARWELL INVESTMENTS INC. et al.
Defendants

Court File No. CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(COMPLETE CERTIFICATION)**

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Ted Frankel LSO #: 49784Q
tfrankel@casselsbrock.com
Jeremy Martin LSO #: 61610K
jmartin@casselsbrock.com
Tel: 416.869.5300
Fax: 416.360.8877

BENSON PERCIVAL BROWN LLP

250 Dundas Street West
Suite 800
Toronto, ON M5T 2Z6

David S. Young LSO #: 23319V
Tel: 416.977.9777
Fax: 416.977.1241
dyoung@bensonpercival.com

Lawyers for the Defendants,
Parwell Investments Inc., Bleeman Holdings Limited, 650 Parliament
Residences Limited, 650 Parliament (LHB) Investments Limited, Greatwise
Developments Corporation and 77 Howard (LHB) Investments Limited

From: Elman, David <DElman@blg.com>
Sent: Wednesday, July 29, 2020 11:34 AM
To: Martin, Jeremy; Harvey T. Strosberg Q.C.; Frankel, Ted; Kerzner, Stephanie; David Young; Zakaib, Glenn
Cc: Sharon Strosberg; Marietta Underwood
Subject: RE: 650 Parliament Street Fire Class Action

For the purpose of Friday's case conference, we have nothing to add to the proposed agenda in Jeremy's email.

Best,

David

David Elman

Partner

T 416.367.6031 | DElman@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

BLG | Canada's Law Firm

Calgary | Montréal | Ottawa | Toronto | Vancouver

blg.com | To manage your communication preferences or unsubscribe, please click on blg.com/mypreferences/

Borden Ladner Gervais LLP

This message is intended only for the named recipients. This message may contain information that is privileged, confidential or exempt from disclosure under applicable law. Any dissemination or copying of this message by anyone other than a named recipient is strictly prohibited. If you are not a named recipient or an employee or agent responsible for delivering this message to a named recipient, please notify us immediately, and permanently destroy this message and any copies you may have. Warning: Email may not be secure unless properly encrypted.

From: Martin, Jeremy <jmartin@cassels.com>

Sent: July-29-20 11:03 AM

To: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Frankel, Ted <tfrankel@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; Zakaib, Glenn <GZakaib@blg.com>; Elman, David <DElman@blg.com>

Cc: Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>

Subject: RE: 650 Parliament Street Fire Class Action

Good morning Harvey,

Attached is our draft Order. It includes highlighted notes for your reference, describing any meaningful changes we have made to your draft and why we have done so for the purposes of discussion. We will forward an identical clean copy to His Honour, excluding those notes.

We disagree that the agenda item can be properly characterized as "settling the opt-out order". We must have a complete certification order settled before class members can meaningfully choose to opt out. The partial certification order was agreed to as an expedient in a crisis and was never intended to be the final version of the Order that will be certified and relied on at the common issues trial. The existing partial certification order is not adequate for that purpose, as I think you would have to agree given your certification materials.

That said, if it is your intention to restrict yourself to the common issues and causes of action certified in the partial certification order, please advise and we will seek further instructions in advance of our case conference.

I propose this as the agenda:

1. Update the Court on the status of the reoccupancy of 650 Parliament.
2. Set a timetable for a motion to amend the partial certification order.
3. Discuss proposed draft certification orders.

Best,

Cassels

JEREMY MARTIN

t: +1 416 860 2929
e: jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Sent: Wednesday, July 29, 2020 9:47 AM
To: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; Kerzner, Stephanie <skerzner@cassels.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; David Elman (DElman@blg.com) <DElman@blg.com>
Cc: Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>
Subject: 650 Parliament Street Fire Class Action

Attached is our draft agenda for the case conference July 31, 2020.
Please send me your comments by 11 am as his honour asked for the agenda yesterday.
harvey

Harvey T. Strosberg Q.C.

Tel: 519.561.6228
Fax: 866.316.5308
Email:harvey@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

From: Sharon Strosberg
Sent: Wednesday, July 29, 2020 1:56 PM
To: Jeremy Martin; Ted Frankel; David Elman; David Young; GZakaib@blg.com
Cc: Debbie Tocco; Harvey T. Strosberg Q.C.
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Here's the email from Gladys asking for the agenda.
We will send the agenda with your revisions and our draft order directly to the judge (as requested in the email below).
Kindly send your draft order black lined (without the comments) as well to the judge.
Sharon

On Jul 27, 2020, at 1:45 PM, Gabbidon, Gladys (JUD) <Gladys.Gabbidon@ontario.ca> wrote:

Good Afternoon, Debbie,

This is to confirm Case Conference July 31, 2020 at 10:00 a.m.

Dial-in information:

- . **Toronto:** **416-212-8013**
- . **Toll Free:** **866-633-1033**
- . **Conference ID:** **6 9 3 1 8 3 4**
- . **Moderator:** **Justice Belobaba**

Please forward your Agenda by Tuesday, July 28, 2020 directly to Justice Belobaba at:
Edward.Belobaba@scj-csj.ca.

Best regards,

Gladys R. Gabbidon
Assistant to Justices Belobaba, Pattillo, Nakatsuru and Bawden
Superior Court of Justice
361 University Avenue, Room 140
Toronto, ON M5G 1T3

Tel: 416-327-5052

Fax: 416-327-5417

From: Debbie Tocco
Sent: Wednesday, July 29, 2020 2:37 PM
To: Belobaba, Mr. Justice Edward (SCJ)
Cc: Jeremy Martin; Ted Frankel; David Elman; David Young; GZakaib@blg.com; Harvey T. Strosberg Q.C.; Sharon Strosberg; Marietta Underwood
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP
Attachments: 1755276.DOCX; 1657726.DOC

Good afternoon Justice Belobaba.

Please find attached the agenda for the case conference Friday, July 31, 2020 at 10 am.

I have also attached the plaintiffs' proposed draft certification order. The defendants will send a copy of their draft order to you as well.

Debbie

On Jul 27, 2020, at 1:45 PM, Gabbidon, Gladys (JUD) <Gladys.Gabbidon@ontario.ca> wrote:

Good Afternoon, Debbie,

This is to confirm Case Conference July 31, 2020 at 10:00 a.m.

Dial-in information:

- . **Toronto:** **416-212-8013**
- . **Toll Free:** **866-633-1033**
- . **Conference ID:** **6 9 3 1 8 3 4**
- . **Moderator:** **Justice Belobaba**

Please forward your Agenda by Tuesday, July 28, 2020 directly to Justice Belobaba at: Edward.Belobaba@scj-csj.ca.

Best regards,

Gladys R. Gabbidon
Assistant to Justices Belobaba, Pattillo, Nakatsuru and Bawden
Superior Court of Justice
361 University Avenue, Room 140
Toronto, ON M5G 1T3

Tel: 416-327-5052

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB) INVESTMENTS
LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AGENDA FOR CASE TELECONFERENCE
(Friday, July 31, 2020 at 10 am)**

1. Update the Court on the status of the re-occupancy of 650 Parliament.
2. Set a timetable for a motion to amend the partial certification order.
3. Discuss proposed draft certification orders.

DRAFT

Court File No.: CV-18-00604410-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) DAY, THE
)
EDWARD BELOBABA) DAY OF JUNE, 2020.
)

B E T W E E N:

CLEMENT CHU, NAHOM ABADI and IDA FABRIGA-CHU

Plaintiffs

and

PARWELL INVESTMENTS INC., BLEEMAN HOLDINGS LIMITED,
650 PARLIAMENT RESIDENCES LIMITED, 650 PARLIAMENT (LHB)
INVESTMENTS LIMITED, ELECTRICAL SAFETY AUTHORITY,
GREATWISE DEVELOPMENTS CORPORATION and
77 HOWARD (LHB) INVESTMENTS LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Further Certification Order)**

THIS MOTION, made by the plaintiffs for certification of this action as a class proceeding, was heard this day in writing.

ON READING the motion record filed,

AND ON READING the partial certification order dated June 13, 2019,

1. FOR THE PURPOSES OF THIS FURTHER CERTIFICATION ORDER,

the following definitions apply:

- (a) “**650 Parliament**” means the rental apartment buildings located at **650 Parliament Street**, Toronto, which consists of a north tower and a south tower;
- (b) “**Buildings**” means the premises municipally described as 650 Parliament Street, Toronto;
- (c) “**Class**” and “**Class Members**” means all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a **Unit** or was ordinarily resident in a **Unit**, or was present in a **Unit** or owned property in a **Unit** or had an interest in property located in a **Unit**;
- (d) “**Class Counsel**” means Strosberg Sasso Sutts LLP and Charney Lawyers PC;
- (e) “**ESA**” means Electrical Safety Authority; and
- (f) “**FLA**” means the *Family Law Act*, R.S.O. 1990, c.F.3;
- (g) “**Family Class**” and “**Family Class Member**” means the living partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member**;
- (h) “**June 13, 2019 Order**” means the certification order made by Justice Belobaba;
- (i) “**Notice**” means the notice of certification of this action as a class proceeding generally in the form attached as Schedule A;
- (j) “**Notice Program**” means the method of distributing the **Notice**;
- (k) “**Opt-Out Date**” means 5:00 p.m. eastern time on September 3, 2020, and
- (l) “**Unit**” means an apartment or other utilizable space at the **Buildings**.

2. THIS COURT DECLARES that by the June 13, 2019 order, this action was certified as a class proceeding against Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited and that Clement Chu and Nahom Abadi were appointed representative plaintiffs of the Class which was defined as:

all persons, excluding the defendants, their senior employees, officers or directors, who on August 21, 2018, rented a Unit or was ordinarily resident in a Unit, or was present in a Unit; or owned property or had in interest in property located in a Unit at the premises municipally described as 650 Parliament Street, Toronto, Ontario.

3. THIS COURT ORDERS that the Family Class is defined as the living partner, spouse, child, grandchild, parent, grandparent or sibling of a Class Member who has not opted out of this class action.

4. THIS COURT ORDERS that Ida Fabriga-Chu is hereby appointed as the representative plaintiff of the Family Class.

5. THIS COURT ORDERS that the Notice, generally in the form attached as Schedule "A", is hereby approved.

6. THIS COURT ORDERS that the Class shall be given notice, on or before September 1, 2020 of the certification of this class action in the following manner (the "Notice Program"):

- (a) by Class Counsel posting the Notice on the website www.strosbergco.com/class-actions/parliament/;

- (b) by Class Counsel sending the Notice by email to every person who registered with Class Counsel and provided a valid e-mail address; and
- (c) by the defendants Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, at their own expense:
 - (i) placing the Notice under each door of each Unit in the Buildings at 650 Parliament;
 - (ii) sending the Notice by regular mail to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided a forwarding address;
 - (iii) sending the Notice by email to each person who was a tenant in the Buildings at 650 Parliament on August 21, 2018 and who provided an email address; and
 - (iv) until September 3, 2020, posting the Notice at the Emergency Response Centre located at 260 Wellesley St. E.; in the lobby and elevators in the Buildings at 650 Parliament; and on the website WPSQ.com.

7. THIS COURT ORDERS THAT on or before September 15, 2020, Class Counsel and counsel for Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, must file with the court an affidavit that they have complied with the notice requirements set out in paragraph 6 of this order.

8. THIS COURT ORDERS that a Class Member may only opt out of this action by sending an election to opt out, by ordinary mail, fax, email or courier which election must be received or post marked on or before the Opt-Out Date, and must be signed by the Class Member or such Class Members' authorized representative, stating that the Class Member opts out of this action and also stating the Class Member's full name, address, telephone number and birth date:

BY REGULAR MAIL TO:
Gregory D. Wigglesworth
Kirwin Partners LLP
423 Pelissier Street
Windsor, Ontario N9A 4L2

Attention: 650 Parliament Street Fire Class Action

or BY FAX TO:
519.790.0034

or BY EMAIL TO:
parliament@kirwinpartners.com, Attention: Gregory Wigglesworth
subject: 650 Parliament Street Fire Class Action

9. THIS COURT ORDERS that no Class Member may opt out of this action after October 15, 2020 at 5:00 p.m. eastern time on the Opt-Out Date, subject to further order of the Court.

10. THIS COURT ORDERS that if a Class Member opts out, the related Family Class Members shall be deemed to have also opted out of this class action.

11. THIS COURT ORDERS that a Family Class Member may not opt out of this class action unless the related Class Member has validly and timely opted out.

12. THIS COURT ORDERS that no person may opt out a minor or a mentally incapable member of the Class from this action without the permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.

13. THIS COURT ORDERS that Gregory Wrigglesworth shall, on or before October 30, 2020, report to the Court and to counsel for the parties by affidavit and list the names and addresses of those persons, if any, who have opted out of this action.

14. THIS COURT ORDERS that the defendants, Parwell Investments Inc. and 650 Parliament (LHB) Investments Limited, shall pay the costs of Gregory Wrigglesworth in the amount of \$2500 plus reasonable disbursements plus HST on or before November 30, 2020.

JUSTICE BELOBABA

CLEMENT CHU et al.

Plaintiffs

vs. PARWELL INVESTMENTS INC. et al.

Defendants

Court File No. CV-18-00604410-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Certification)

STROSBERG SASSO SUTTS LLP

Lawyers

1561 Ouellette Avenue
Windsor ON N8X 1K5

HARVEY T. STROSBERG Q.C./LSO #126400

SHARON STROSBERG/LSO #44233W

Tel: 519.561.6228 / 519.561.6244

Fax: 519.561.6203

CHARNEY LAWYERS

#602-151 Bloor St. W.

Toronto, Ontario M5S 1S4

THEODORE P. CHARNEY/LSO #26853E

TINA YANG/LSO #60010N

Tel: 416-964-7950

Fax: 416-964-7416

Lawyers for the plaintiffs

Sumaiya Akhter

From: Martin, Jeremy <jmartin@cassels.com>
Sent: Thursday, July 30, 2020 2:12 PM
To: Sharon Strosberg; Frankel, Ted; David Elman; David Young; GZakaib@blg.com
Cc: Debbie Tocco; Harvey T. Strosberg KC
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Sharon,

We have had the opportunity to further discuss your draft order with counsel for ESA and we can now advise that neither of us believes it will be necessary to submit a competing draft order to the Court. We do have some practical concerns about the expansion of the general class definition in the new order (those who "owned property in a Unit or had an interest in property located in a Unit"), but otherwise we are content to proceed with your draft order exclusively as the basis for our discussion tomorrow.

I will reach out to the Court momentarily to advise His Honour of the same.

Best,

Cassels | **JEREMY MARTIN**
t: +1 416 860 2929
e: jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
 Suite 2100, Scotia Plaza, 40 King St. W.
 Toronto, ON M5H 3C2 Canada

From: Sharon Strosberg <sharon@strosbergco.com>
Sent: Wednesday, July 29, 2020 1:56 PM
To: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com
Cc: Debbie Tocco <dtocco@strosbergco.com>; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Here's the email from Gladys asking for the agenda.

We will send the agenda with your revisions and our draft order directly to the judge (as requested in the email below).

Kindly send your draft order black lined (without the comments) as well to the judge.

Sharon

Sharon Strosberg
 Tel: 519.561.6244
 Fax: 866.316.5308
 Email: sharon@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

On Jul 27, 2020, at 1:45 PM, Gabbidon, Gladys (JUD) <Gladys.Gabbidon@ontario.ca> wrote:

Good Afternoon, Debbie,

This is to confirm Case Conference July 31, 2020 at 10:00 a.m.

Dial-in information:

- . **Toronto:** **416-212-8013**
- . **Toll Free:** **866-633-1033**
- . **Conference ID:** **6 9 3 1 8 3 4**
- . **Moderator:** **Justice Belobaba**

Please forward your Agenda by Tuesday, July 28, 2020 directly to Justice Belobaba at:
Edward.Belobaba@scj-csj.ca.

Best regards,

Gladys R. Gabbidon

Assistant to Justices Belobaba, Pattillo, Nakatsuru and Bawden
Superior Court of Justice
361 University Avenue, Room 140
Toronto, ON M5G 1T3

Tel: 416-327-5052

Fax: 416-327-5417

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

From: Martin, Jeremy <jmartin@cassels.com>
Sent: Thursday, July 30, 2020 2:22 PM
To: Debbie Tocco; Belobaba, Mr. Justice Edward (SCJ)
Cc: Frankel, Ted; David Elman; David Young; GZakaib@blg.com; Harvey T. Strosberg Q.C.; Sharon Strosberg; Marietta Underwood
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Your Honour,

After further discussion, we believe counsel have narrowed the issues for certification sufficiently that it will be unnecessary for the defendants to submit a competing draft order for your review. We are content to proceed with our friends' draft order as the basis for tomorrow's discussion.

Respectfully yours,

Cassels | **JEREMY MARTIN**
t: +1 416 860 2929
e: jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

From: Debbie Tocco <dtocco@strosbergco.com>
Sent: Wednesday, July 29, 2020 2:37 PM
To: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Cc: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@benonpercival.com>; GZakaib@blg.com; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Justice Belobaba.

Please find attached the agenda for the case conference Friday, July 31, 2020 at 10 am.

I have also attached the plaintiffs' proposed draft certification order. The defendants will send a copy of their draft order to you as well.

Debbie

Debbie Tocco
File Administrator

Tel: 519.561.6296
Fax: 866.316.5308
Email: dtocco@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

On Jul 27, 2020, at 1:45 PM, Gabbidon, Gladys (JUD) <Gladys.Gabbidon@ontario.ca> wrote:

Good Afternoon, Debbie,

This is to confirm Case Conference July 31, 2020 at 10:00 a.m.

Dial-in information:

- . **Toronto:** **416-212-8013**
- . **Toll Free:** **866-633-1033**
- . **Conference ID:** **6 9 3 1 8 3 4**
- . **Moderator:** **Justice Belobaba**

Please forward your Agenda by Tuesday, July 28, 2020 directly to Justice Belobaba at:
Edward.Belobaba@scj-csj.ca.

Best regards,

Gladys R. Gabbidon
Assistant to Justices Belobaba, Pattillo, Nakatsuru and Bawden
Superior Court of Justice
361 University Avenue, Room 140
Toronto, ON M5G 1T3

Tel: 416-327-5052
Fax: 416-327-5417

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

From: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Sent: Thursday, July 30, 2020 2:48 PM
To: Martin, Jeremy; Debbie Tocco
Cc: Frankel, Ted; David Elman; David Young; GZakaib@blg.com; Harvey T. Strosberg Q.C.; Sharon Strosberg; Marietta Underwood
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

And we need the Tel CC tomorrow because ...??.

Get Outlook for iOS

From: Martin, Jeremy <jmartin@cassels.com>
Sent: Thursday, July 30, 2020 2:22:26 PM
To: Debbie Tocco <dtocco@strosbergco.com>; Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Cc: Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com <GZakaib@blg.com>; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Your Honour,

After further discussion, we believe counsel have narrowed the issues for certification sufficiently that it will be unnecessary for the defendants to submit a competing draft order for your review. We are content to proceed with our friends' draft order as the basis for tomorrow's discussion.

Respectfully yours,

Cassels | **JEREMY MARTIN**
+1 416 860 2929
jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, 40 King St. W.
Toronto, ON M5H 3C2 Canada

Sumaiya Akhter

From: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Sent: Thursday, July 30, 2020 3:08 PM
To: Harvey T. Strosberg KC; Martin, Jeremy; Debbie Tocco
Cc: Frankel, Ted; David Elman; David Young; GZakaib@blg.com; Sharon Strosberg; Marietta Underwood
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Thank you, talk tomorrow ...

Get [Outlook for iOS](#)

From: Harvey T. Strosberg Q.C. <harvey@strosbergco.com>
Sent: Thursday, July 30, 2020 3:06:50 PM
To: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>; Martin, Jeremy <jmartin@cassels.com>; Debbie Tocco <dtocco@strosbergco.com>
Cc: Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com <GZakaib@blg.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>
Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Justice Belobaba,

Class counsel wishes to settle the form of the order, have you sign the order and give notice to the class members and the family class members.

harvey

Harvey T. Strosberg Q.C.

Tel: 519.561.6228
 Fax: 866.316.5308
 Email: harvey@strosbergco.com



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Sent: Thursday, July 30, 2020 2:48 PM
To: Martin, Jeremy <jmartin@cassels.com>; Debbie Tocco <dtocco@strosbergco.com>
Cc: Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

And we need the Tel CC tomorrow because ...??.

Get [Outlook for iOS](#)

From: Martin, Jeremy <jmartin@cassels.com>
Sent: Thursday, July 30, 2020 2:22:26 PM
To: Debbie Tocco <dtocco@strosbergco.com>; Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>
Cc: Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young

<DYoung@bensonpercival.com>; GZakaib@blg.com <GZakaib@blg.com>; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>

Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Your Honour,

After further discussion, we believe counsel have narrowed the issues for certification sufficiently that it will be unnecessary for the defendants to submit a competing draft order for your review. We are content to proceed with our friends' draft order as the basis for tomorrow's discussion.

Respectfully yours,

Cassels | **JEREMY MARTIN**
 t: +1 416 860 2929
 e: jmartin@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
 Suite 2100, Scotia Plaza, 40 King St. W.
 Toronto, ON M5H 3C2 Canada

From: Debbie Tocco <dtocco@strosbergco.com>

Sent: Wednesday, July 29, 2020 2:37 PM

To: Belobaba, Mr. Justice Edward (SCJ) <Edward.Belobaba@scj-csj.ca>

Cc: Martin, Jeremy <jmartin@cassels.com>; Frankel, Ted <tfrankel@cassels.com>; David Elman <DElman@blg.com>; David Young <DYoung@bensonpercival.com>; GZakaib@blg.com; Harvey T. Strosberg Q.C. <harvey@strosbergco.com>; Sharon Strosberg <sharon@strosbergco.com>; Marietta Underwood <munderwood@strosbergco.com>

Subject: RE: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Good afternoon Justice Belobaba.

Please find attached the agenda for the case conference Friday, July 31, 2020 at 10 am.

I have also attached the plaintiffs' proposed draft certification order. The defendants will send a copy of their draft order to you as well.

Debbie

Debbie Tocco
Debbie Tocco

Tel: 519.561.6296
 Fax: 866.316.5308
 Email: dtocco@strosbergco.com



1561 Ouellette Avenue | Windsor, ON N8X 1K5

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this in error, please contact the sender and delete the material from any computer. Please note: from time to time, our spam filters eliminate legitimate e-mail from clients. If your e-mail contains important instructions, please ensure that we acknowledge receipt of those instructions.

On Jul 27, 2020, at 1:45 PM, Gabbidon, Gladys (JUD) <Gladys.Gabbidon@ontario.ca> wrote:

Good Afternoon, Debbie,

This is to confirm Case Conference July 31, 2020 at 10:00 a.m.

Dial-in information:

- . **Toronto:** **416-212-8013**
- . **Toll Free:** **866-633-1033**
- . **Conference ID:** **6 9 3 1 8 3 4**
- . **Moderator:** **Justice Belobaba**

Please forward your Agenda by Tuesday, July 28, 2020 directly to Justice Belobaba at:
Edward.Belobaba@scj-csj.ca.

Best regards,

Gladys R. Gabbidon

Assistant to Justices Belobaba, Pattillo, Nakatsuru and Bawden
Superior Court of Justice
361 University Avenue, Room 140
Toronto, ON M5G 1T3

Tel: 416-327-5052

Fax: 416-327-5417

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited.

Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

From: Sharon Strosberg
Sent: Friday, July 31, 2020 11:07 AM
To: Harvey T. Strosberg Q.C.; Martin, Jeremy; Debbie Tocco
Cc: Frankel, Ted; David Elman; David Young; GZakaib@blg.com; Marietta Underwood
Subject: Re: Chu v. Parwell Investments Inc. et al. - Court File No.: CV-18-00604410-00CP

Sorry one other thing: please send us the information about the defendants ownership interest in the property. In the first instance the letter is ok but ultimately we will need to file an affidavit in court should we determine that we need to obtain leave to dismiss the action against some defendants.

On Jul 31, 2020, at 10:54 AM, Sharon Strosberg <sharon@strosbergco.com> wrote:

Ted and Jeremy

We look forward to receiving your form of draft order. I know you gave us a draft order previously with your comments, but your email to the court yesterday indicated that you were generally content with our form of order, so we would like to see the most recent iteration from you. We are cognizant of the August 10th deadline to set a schedule, so we would be grateful to have your form of order as soon as possible for our consideration.

Thank you.

Sharon