



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KRISTIYAN TODOROV

Plaintiff

- and -

BRANDY LANE CORPORATION and WYLDEWOOD CREEK INC.

Defendants

IN THE MATTER OF THE *Class Proceedings Act, 1992*, S.O. 1992, c. 6

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY

-2-

LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar
Address of 330 University Avenue
court office: Toronto, ON
M5G 1R7

TO: Brandy Lane Corporation
4580 Dufferin Street
Suite 307
Toronto ON M3H 5Y2

AND TO: Wyldewood Creek Inc.
4580 Dufferin Street
Suite 307
Toronto ON M3H 5Y2

CLAIM

1. The plaintiff claims:
 - (a) an order certifying this proceeding as a class proceeding and appointing the plaintiff as representative plaintiff for the Class and any appropriate subclass thereof;
 - (b) damages in the amount of \$30,000,000 for breach of contract and unjust enrichment;
 - (c) a declaration that the benefits which accrued to the defendants as a result of their wrongful conduct unjustly enriched the defendants;
 - (d) a declaration that the defendants hold in trust for the Class the benefits which accrued to the defendants as a result of their wrongful conduct, which sum is presently estimated to be \$30,000,000;
 - (e) further, or in the alternative, an accounting of the benefits which accrued to the defendants as a result of their wrongful conduct and judgment in that amount;
 - (f) disgorgement of the benefits which accrued to the defendants as a result of their wrongful conduct;
 - (g) punitive and exemplary damages;
 - (h) prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended;
 - (i) the costs of this proceeding, plus all applicable taxes; and
 - (j) such other relief as to this Honorable Court may seem just.

Overview

2. This proceeding concerns the improper termination of Agreements of Purchase and Sale (the "Agreements" or the "APS") by the defendants, who are the developers of a condominium project known as Wyldewood Creek in Collingwood, Ontario. The defendants terminated the Agreements outside of the time limits permitted in the Agreements and the statutory Tarion Addendum that formed part of the Agreements.

3. As a result, the defendants owe the Wyldewood Creek purchasers damages as a result of their breach of contract and other wrongful conduct. The damages are the difference between the APS purchase prices of the condominium units and the market value of the units on the date of the defendants' improper termination of the Agreements.

The Plaintiff

4. The plaintiff, Kristiyan Todorov, is an individual residing in the Province of Ontario and was a purchaser of a condominium at Wyldewood Creek.

The Class

5. The plaintiff brings this action on his own behalf and on behalf of anyone who entered into an Agreement of Purchase and Sale with the defendants for the purchase of a condominium at Wyldewood Creek (the "Class").

The Defendants

6. The defendant, Brandy Lane Corporation, is an Ontario corporation located in Toronto. Brandy Lane engages in the business of land development and construction.

7. The defendant, Wyldewood Creek Inc., is an Ontario corporation located in Toronto.

8. Brandy Lane is the undisclosed principal of Wyldewood Creek and is subject to all of Wyldewood Creek's rights and obligations with respect to the Agreements. Wyldewood Creek is the bare trustee of Brandy Lane.

Agreements of Purchase and Sale

9. Wyldewood Creek was intended to be a residential condominium project located in Collingwood, Ontario. It was marketed as a being suitable for a "four season lifestyle", with year round recreational amenities taking advantage of its proximity to Georgian Bay, Blue Mountain, and other points of interest.

10. In or around 2019, the defendants began marketing condominium units at Wyldewood Creek for sale.

11. Between 2019 and 2020, the defendants entered into 165 Agreements of Purchase and Sale for the sale of pre-construction condominiums at Wyldewood Creek.

12. The Agreements of Purchase and Sale were standard-form agreements which provided for, among other things, a purchase price, a significant deposit and a schedule for determining the closing date.

13. With respect to the closing date, the Agreements contained the mandatory Tarion Addendum. The Tarion Addendum is a statutorily mandated standard-form addendum to every new home purchase agreement in Ontario.

14. Section 6(d) of the Tarion Addendum provides that the obligation to complete the transaction is subject to Early Termination Conditions in favour of the vendor. In short, the vendor is permitted to terminate the agreement without paying damages if the Early Termination Condition is exercised by the vendor by the mandated date.

15. The Agreements of Purchase and Sale for Wyldewood Creek included two Early Termination Conditions:

- (a) a condition that the vendor enter into 130 binding agreements of purchase and sale; and
- (b) a condition that the vendor obtain mortgage financing for the construction of the project.

16. The date for satisfaction of these conditions in the Wyldewood Creek Tarion Addendum was November 30, 2020.

17. Section 6(h) of the Tarion Addendum provides that for conditions under paragraph 1(b) of Schedule A (which includes conditions for the sale of units and for financing), if notice of either waiver or termination is not provided by the vendor by the Early Termination Condition date, the condition is "deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties."

18. Section 6(d) of the Tarion Addendum also provides that the Early Termination Condition date may be changed through the mutual consent of the parties. However, if the date is moved it must be to a date at least 90 days before the First Tentative Occupancy Date listed in the Addendum. If it is not, the new date is deemed to be the date that is 90 days before the First Tentative Occupancy Date. As set out in s. 6(d) of the Addendum:

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. ... [Emphasis added]

19. It is impermissible to contract out of the Tarion Addendum and the Addendum prevails over any other part of the Agreement in the event of a conflict. As set out in s. 13 of the Addendum:

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

Amendment to APS

20. In or around June 2021, the defendants secured the signatures of Wyldewood Creek purchasers on an "Amendment to Agreement" providing that the date by which Condition #2 (the financing Early Termination Condition) was to be satisfied was to be moved to November 30, 2021 (rather than November 30, 2020).

21. However, because the new purported Early Termination Condition date was not at least 90 days before the First Tentative Occupancy Date in the Agreements of Purchase and Sale, in accordance with s. 6(d) of the Tarion Addendum, the date was deemed to be 90 days before the First Tentative Occupancy Date.

22. The Early Termination Condition had therefore either expired or already been "deemed satisfied or waived" prior to November 29, 2021.

Breach of Contract

23. On November 29, 2021, the President of Brandy Lane, David Hirsh, wrote to the purchasers advising them that Wyldewood Creek could not obtain financing for the development and that it was "cancelling" the APS pursuant to the Early Termination Condition of the Tarion Addendum.

24. However, pursuant to s. 6(d) of the Tarion Addendum, the Early Termination Condition had already been "deemed satisfied or waived" and was no longer exercisable by the

defendants. The APS was binding and the vendor's termination amounted to a breach of contract entitling the purchasers to damages.

25. The defendants are liable for damages for breach of contract in an amount equal to the difference between the purchase price of each condominium unit and the fair market value of the unit on the date of breach.

26. The defendants have continued to advance the development of the condominium project despite terminating the existing agreements, presumably with the goal of reselling the units or the development at higher prices while avoided their obligations to their existing purchasers.

Unjust Enrichment

27. The defendants have been unjustly enriched. The defendants have been enriched and the purchasers have suffered a corresponding deprivation. There is no juristic reason for the enrichment or the deprivation.

28. The defendants received the value of millions of dollars of deposits provided by the purchasers and used these funds to advance the development of their condominium project. They have not paid any interest on the deposits to purchasers. In addition, the defendants have received the benefit of the enormous increase in land value in Collingwood over the period during which they were holding the purchasers' deposits. The purchasers and not the defendants should be the beneficiaries of this value.

Proposed Representative Plaintiff

29. The proposed representative plaintiff, Kristiyan Todorov, entered into an agreement of purchase and sale (the "APS") with the defendants on April 13, 2019. The purchase price of the unit was \$449,990. He paid deposits totalling \$90,000.

30. Pursuant to the Tarion Addendum of Todorov's APS, the First Tentative Occupancy Date was March 1, 2021, and the Early Termination Condition date was November 30, 2020.

31. On June 5, 2021, the plaintiff signed an amendment to the APS prepared by the defendants and that purported to move the Early Termination Condition to November 30, 2021. However, pursuant to s. 6(d) of the Tarion Addendum, the date was automatically deemed to be December 1, 2020.

32. The defendants wrote a letter terminating the APS, purporting to rely on the Early Termination Condition, on November 29, 2021. However, the Early Termination Condition had already expired and was "deemed satisfied or waived" pursuant to the Tarion Addendum.

33. Accordingly, the defendants' termination of the APS amounted to a breach of contract and the defendants are liable to the plaintiff for damages.

Damages

34. The plaintiff claims damages in an amount equal to the difference between the aggregate sale price of the Agreements of Purchase and Sale and the value of the relevant properties as of November 29, 2021.

35. Furthermore, by their actions, the defendants has shown a reckless, contemptuous and shameful disregard for the rights and interests of the Class members, warranting an award of punitive and exemplary damages.

November 17, 2023

STEVENSON WHELTON LLP

Barristers
15 Toronto Street
Suite 200
Toronto ON M5C 2E3

Neil G. Wilson (LSO# 60882V)
nwilson@swlawyers.ca

Meaghan Coker (LSO# 84322E)
mcoker@swlawyers.ca

Tel: 416-599-7900

Fax: 416-599-7910

Lawyers for the plaintiff

KRISTIYAN TODOROV
Plaintiff

-and- BRANDY LANE CORPORATION and others
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

STEVENSON WHELTON LLP

Barristers

15 Toronto Street

Suite 200

Toronto ON M5C 2E3

Neil G. Wilson (LSO# 60882V)

nwilson@swlawyers.ca

Meaghan Coker (LSO# 84322E)

mcoker@swlawyers.ca

Tel: 416-599-7900

Fax: 416-599-7910

Lawyers for the plaintiff