

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Cv-19-00 630024-00CP

BETWEEN:

(Court Seal)



NATALIA KARASIK and DANIEL BURTMAN

Plaintiffs

and

1945087 ONTARIO INC., 1945086 ONTARIO INC., LIBERTY  
DEVELOPMENT CORPORATION and 1834371 ONTARIO INC.

Defendants

**Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6**

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, 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 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

OCT 28, 2019

Issued by

  
Local Registrar

Address of  
court office:

Superior Court of Justice  
393 University Avenue, 10th Floor  
Toronto ON M5G 1E6

TO: **1945086 ONTARIO INC.**  
1 Steelcase Road West, Unit 8  
Markham, ON L43 OT3

AND TO: **1945087 ONTARIO INC.**  
1 Steelcase Road West, Unit 8  
Markham, ON L43 OT3

AND TO: **1834371 ONTARIO INC.**  
1 Steelcase Road West, Unit 8  
Markham, ON L43 OT3

AND TO: **LIBERTY DEVELOPMENT CORPORATION**  
1 Steelcase Road West, Unit 8  
Markham, ON L43 OT3

## CLAIM

1. The plaintiffs, Natalia Karasik and Daniel Burtman claim as against the defendants 1945087 Ontario Inc. and 1945086 Ontario Inc. (the “Vendors”):

- (a) a declaration that the defendants breached agreements of purchase and sale entered into with each of the plaintiffs and others for the pre-construction sale of a residential condominium unit in a project then being developed (the “Comos Towers project”) on the property legally described as Lots 1 and 2, Registered Plan 7977, City of Vaughan, Regional Municipality of York in the Province of Ontario (the “**Lands**”);
- (b) damages for breach of the said agreements in the amount of \$50 million;

2. The plaintiffs, Natalia Karasik and Daniel Burtman claim as against the defendants Liberty Development Corporation (“Liberty”) and 1834371 Ontario Inc. (“183”):

- (a) damages for the unlawful means tort in the amount of \$50 million;

3. The plaintiffs, Natalia Karasik and Daniel Burtman claim as against all defendants:

- (a) damages for the tort of conspiracy in the amount of \$50 million;
- (b) an order pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs;
- (c) pre-judgment and post-judgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- (d) punitive damages in the amount of \$5 million;
- (e) the costs of this proceeding, plus all applicable taxes; and
- (f) such further and other relief as to this Honourable Court may seem just.

### **The Parties**

- 4. The plaintiff, Natalia Karasik, is a resident of Orillia, Ontario.
- 5. The plaintiff, Daniel Burtman, is a resident of Woodbridge, Ontario.
- 6. The defendant Vendors are corporations incorporated under the laws of the province of Ontario.
- 7. The defendant 183 is the owner of the Lands.
- 8. The defendant Liberty is a full service real estate manager of commercial, office and residential buildings in the Greater Toronto Area. Liberty was engaged by the Vendors to provide management services to it in respect of the development of the Cosmos Tower project.

### **The Project**

- 9. Cosmos Tower was to be a three tower residential condominium tower. The three towers were known as Tower A, Tower B, and Tower III. The defendant, 1945086 Ontario Inc., was the vendor of residential condominium units in Tower A and Tower B while the defendant, 1945087 Ontario Inc. was the vendor of residential condominium units in Tower III.

10. Ultimately, the Cosmos Tower project was to encompass approximately 1,100 residential condominium units.

11. Cosmos Tower units became available for sale to the public in or around 2016. The sale was on a pre-construction basis. The Cosmos Tower project quickly sold out.

12. On or about September 25, 2016, the plaintiff Natalia Karasik entered into an Agreement of Purchase and Sale with one of the Vendors (1945087 Ontario Inc.) to purchase Suite 3003, Unit 03 Level 29, a one bedroom unit of approximately 595 sq. ft. for the agreed upon purchase price of \$330,900.

13. On or about April 30, 2016, the plaintiff Daniel Burtman entered into an Agreement of Purchase and Sale with one of the Vendors (1945086 Ontario Inc.) to purchase Suite 2108, Unit 08, Level 20, a one bedroom unit of approximately 650 sq. ft. for the agreed upon purchase price of \$318,900.

14. Both Agreements of Purchase of Sale (collectively, the “Agreements”) entered into by the plaintiffs with the Vendors were contracts of adhesion.

#### **The Vendors Cancel the Project**

15. The Agreements were conditional on the Vendors obtaining construction financing for Cosmos Tower on terms satisfactory to them.

16. Specifically, the Vendors required the plaintiffs to sign a standard form Addendum to the Agreements (the “Addendum”), which included an appendix entitled Early Termination Conditions, which provided as follows:

Description of the Early Termination Condition: The Purchase Agreement is conditional upon receipt by the Vendor of confirmation that the financing for the project on terms satisfactory to the Vendor has been arranged.

The Approving Authority (as that term is defined in Schedule A) is: n/a, the determination of the Vendor in its sole, absolute and unfettered discretion (collectively, the “Early Termination Condition”).

17. It was an implied term of the Agreements that the Vendors would act in good faith in making every reasonable commercial effort to obtain construction financing satisfactory to them on terms that were commercially reasonable.

18. In April, 2018, the plaintiffs were notified that the Vendors were exercising their rights under the Early Termination Condition to cancel the Cosmos Tower project. The Vendors asserted that despite taking all commercially reasonable steps, financing satisfactory to them could not be arranged.

19. The plaintiffs’ deposits were returned to them.

### **The Application**

20. By Notice of Application issued August 30, 2018, Mr. Burtman, along with 604 other purchasers (the “Applicant Group”) brought an application against the Vendors and Liberty asserting that the Early Termination Condition was null and void.

21. By decision delivered April 29, 2019, the Honourable Justice Penny found that the Early Termination Condition was not unenforceable, and dismissed the Applicant Group’s application. Justice Penny did, however, note that the issue of the reasonableness and good faith of the Vendors’ termination in reliance of the Early Termination Condition was not engaged by the Applicant Group.

22. In this proposed class proceeding, the representative plaintiffs assert that the Vendors' termination of the Agreements in reliance upon the Early Termination Condition was not reasonable, and was not in good faith.

### **The Proposed Class**

23. The plaintiffs bring this action on their own behalf and if certified, on behalf of all of the other purchasers who entered into Agreements of Purchase and Sale with the Vendors for the purchase of one or more Cosmos Tower condominium units on terms that in all material respects except price were the same as plaintiffs' Agreements (the "Entire Purchaser Class").

24. In the alternative, if the Applicant Group's claims are *res judicata* or an abuse of process, Ms. Karasik seeks certification of a class that encompasses the Entire Purchaser Class, excluding the Applicant Group.

### **Causes of Action**

25. The plaintiffs state that the Vendors breached the Agreements of Purchase and Sale entered into with them and all other Cosmos Tower condominium unit purchasers.

26. Had the Vendors acted in good faith, and in a commercially reasonable manner, they would have been able to obtain construction financing on reasonable commercial terms.

27. The plaintiffs further state that the defendants terminated the Agreements for one reason and one reason only: the defendants were well aware that prices for condominium units in the Greater Toronto Area were rising dramatically over the period of time from when the plaintiffs and others entered into their Agreements, and the date the Vendors terminated the Agreements. The

defendants terminated the Agreements in order to enable them, or other corporations associated or to be associated with them, to market a residential condominium project at a later date at increased prices which would significantly increase their profits as compared to their anticipated profit on the Cosmos Tower project.

28. Specifically, the plaintiffs plead that it was an express or implied term of the Agreements that the Vendors would only exercise their rights under the Early Termination Condition in good faith, and in a non-arbitrary manner.

29. The plaintiffs pleads that the Vendors' reliance on the Early Termination Condition as justification for terminating the Agreements was a breach of the Agreement itself.

30. Still, the plaintiffs plead that the Vendors had a duty to act in good faith in performing the Agreements and by cancelling the Agreements for their own commercial benefit, they breached this good faith obligation.

31. The plaintiffs plead that Liberty and 183 committed an unlawful act against the Vendors, and that unlawful act caused the plaintiffs damages. The plaintiffs plead that Liberty and 183 instructed, directed, advised, or induced the Vendors to rely on the Early Termination Condition to cancel the Agreements, with actual knowledge, or else wilful blindness, to the fact that the Early Termination Condition was not grounds upon which the Vendors could terminate the Agreements.

32. The plaintiffs plead that in so doing, Liberty and 183 unlawfully interfered with the Agreements between the plaintiffs and the vendors.

33. The plaintiffs plead that all defendants are liable for the tort of civil conspiracy (unlawful means), the particulars of which include that the defendants:



- (a) acted in combination, specifically with a common design that the Vendors would terminate the Agreements;
- (b) acted unlawfully, in that the defendants either breached the Agreements, or procured a breach of the Agreements;
- (c) directed their conduct towards the plaintiffs, in that the defendants knew their unlawful acts would cause the Vendors to terminate the Agreements; and
- (d) knew that that the plaintiffs were likely to be injured by their actions.

34. The plaintiffs plead that as a result of the defendants' unlawful conspiracy, they suffered harm, including the loss of the condominium units they had intended to purchase.

35. The particulars of the conspiracy, including when and how it developed among the defendants, is known to those parties, and will be particularized in advance of trial.

### **Damages**

36. Each of the plaintiffs and other persons entering into Agreements have sustained damages by reason of the defendants' unlawful termination of the Agreements. Each of the plaintiffs and the other members of the class lost the opportunity to acquire a condominium unit at an agreed upon contract price, being an amount in each case that was significantly less than the market value of the condominium unit as of the date of termination. The plaintiffs and the other prospective purchasers have continued to suffer losses to date by the subsequent increase in condominium prices in the Greater Toronto Area.

37. The defendants, in terminating the aforesaid Agreements acted in a high-handed manner exhibiting a callous disregard for the rights of purchasers of the Cosmos Tower projects. The defendants terminated the Agreements knowing full well that they were depriving the plaintiffs of the opportunity to acquire the condominium units at the prices bargained for. The defendants terminated the Agreements solely to increase its own prospective profits. An award of punitive damages is appropriate.

38. The plaintiffs plead and rely on ss. 6, 11, 12, 24 and 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

39. The plaintiffs propose that this action be tried in Toronto.

October 29, 2019

**ADAIR GOLDBLATT BIEBER LLP**  
95 Wellington Street West  
Suite 1830, P.O. Box 14  
Toronto ON M5J 2N7

Jordan Goldblatt (50755H)  
Email: [jgoldblatt@agblp.com](mailto:jgoldblatt@agblp.com)  
Tel: 416.920.9777  
Fax: 647.689.2059

Michael Darcy (66602R)  
Email: [mdarcy@agblp.com](mailto:mdarcy@agblp.com)  
Tel: 416.351.2793  
Fax: 647.689.2059

Lawyers for the Plaintiffs

NATALIA KARSIK et al. ,  
Plaintiffs

-and- 194506 ONTARIO INC. et al.  
Defendants

*CV-19-00630024-00CP*

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

**ADAIR GOLDBLATT BIEBER LLP**

95 Wellington Street West  
Suite 1830, P.O. Box 14  
Toronto ON M5J 2N7

Jordan Goldblatt (50755H)

Email: [jgoldblatt@agblp.com](mailto:jgoldblatt@agblp.com)

Tel: 416.920.9777

Fax: 647.689.2059

Michael Darcy (66602R)

Email: [mdarcy@agblp.com](mailto:mdarcy@agblp.com)

Tel: 416.351.2793

Fax: 647.689.2059

Lawyers for the Plaintiffs