

Court File No. CV-19-00630024-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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 DEFENCE
OF LIBERTY DEVELOPMENT CORPORATION
AND 1834371 ONTARIO INC.**

1. The defendants, Liberty Development Corporation ("Liberty") and 1834371 Ontario Inc. ("183") admit the allegations contained in paragraphs 6 to 9 of the Statement of Claim.
2. Liberty and 183 have no knowledge or deny the allegations contained in remaining paragraphs of the Statement of Claim.

3. Liberty and 183 state that this claim by the plaintiffs and the proposed plaintiffs (hereinafter, the "Plaintiffs"), or any of them, is an abuse of process in that they have previously commenced a separate proceeding (as referred to in paragraph 20 of the Statement of Claim) in which they have claimed the same or substantially the same relief.

4. As is set out in further detail below, Liberty and 183 deny that they committed an unlawful act or engaged in any form of conspiracy with the co-defendants (the "Vendors") in connection with the termination of the agreements of purchase and sale and state that these allegations are complete fabrications on the part of the Plaintiffs for which an award of substantial indemnity costs is appropriate.

5. Liberty states that to its knowledge, the termination of the agreements of purchase and sale were carried out lawfully and in accordance with the terms of the agreements of purchase and sale between the Vendors and the Plaintiffs including, particularly, in accordance with the "Early Termination Condition".

6. Liberty denies that the agreements of purchase and sale were contracts of adhesion and, in any event, state that the Early Termination Condition that is mandated by Tarion cannot be regarded as a contractual term of adhesion given that the Vendors are mandated to include that term in the agreement of purchase and sale for the benefit of both purchasers and vendors in the Province of Ontario.

7. Liberty states that the decision to cancel the Cosmos Towers project (as defined in the Statement of Claim) was carried out for legitimate reasons and was performed entirely in good faith by the Vendor(s).

8. More particularly, Liberty and 183 state that the decision to cancel the Cosmos Towers project and terminate the agreements of purchase and sale with the plaintiffs was a decision made entirely by the Vendor(s), as a result of their inability to obtain financing on terms that were satisfactory to the Vendor(s) and that Liberty and 183 were not involved in such decision.

9. Liberty states that to its knowledge, the Vendors' lenders changed the terms of their proposed financing as a result of an unexpected and unprecedented escalation in construction costs. Such a change in the financing terms caused the Cosmos Towers project to no longer be financially feasible.

10. Liberty states that the unexpected escalation in construction costs is a fact which has received significant public attention; is well-known in the marketplace, and was known in particular by the Plaintiffs prior to their commencement of this action. This escalation of costs has led to the cancellation of numerous other projects by various developers in the Greater Toronto Area and within the Province of Ontario.

11. Liberty and 183 state that the Plaintiffs, like all purchasers of real estate, understood the risks of their purchases and the possibility that changes in the marketplace might lead to the cancellation of the Cosmos Towers project. Despite their knowledge of these risks, the Plaintiffs decided to proceed with their respective real estate purchases.

12. Liberty and 183 state that to the extent that the Plaintiffs wanted to revise and/or imply terms within the agreements of purchase and sale with the Vendors they knew or ought to have known that their opportunity to do so was prior to or within the legislated 10-day "cooling-off" period following their execution of the agreements of purchase and sale.

13. Liberty and 183 state, in any event, that each of the Plaintiffs have had 100% of their deposits refunded to them and have suffered no loss on their purchases and that this claim amounts to the loss of a right to profit on their real estate investment which is not recognized nor recoverable at law.

14. Liberty and 183 deny that there has been a continuous increase in condominium prices and state that there have been opportunities to purchase condominiums at lower prices since the cancellation of the Cosmos Towers project.

15. Liberty and 183 state that Plaintiffs have had opportunities to mitigate and/or eliminate their alleged losses, which losses are not admitted but are denied, through, *inter alia*, the purchase of other properties or the making of other investments since the termination of their agreements of purchase and sale.

16. Liberty and 183 state that many of the Plaintiffs have in fact purchased other real estate properties and/or made other investments with the monies they had used to purchase their condominium units and have, accordingly, fully mitigated their alleged losses. Liberty and 183 state that to the extent that the Plaintiffs have failed to take advantage of such opportunities to purchase other properties or make other investments, that they are estopped from claiming the damages claimed in this action.

17. Liberty and 183 deny that a class action is the preferable procedure for resolving this dispute given the many different circumstances of the Plaintiffs; that the representative plaintiffs do not represent the interests of all members of the class; and that there are too many issues of fact and law that are not common among the Plaintiffs.

18. Liberty and 183 further state that there is no basis for an allegation of punitive damages against them.

19. Liberty and 183 request that this action be dismissed with costs on a substantial indemnity basis.

Date: July 17, 2020

KRAMER SIMAAN DHILLON LLP

Litigation Counsel
120 Adelaide Street West
Suite 2100
Toronto, Ontario
M5H 1T1

Micheal Simaan #41396A

EMAIL: msimaan@kramersimaan.com

TEL: (416) 601-6820

FAX: (416) 601-0712

Lawyers for the Defendant,
Liberty Development Corporation
And 1834371 Ontario Inc.

TO: ADAIR GOLDBLATT BIEBER LLP

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

Jordan Goldblatt #50755H

EMAIL: jgoldblatt@agblp.com

TEL: (416)920-9777

FAX: (647)689-2059

Michael Darcy #66602R

EMAIL: mdarcy@agblp.com

TEL: (416)351-2793

FAX: (647)689-2059

Lawyers for the Plaintiffs

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AND TO: LENCZNER SLAGHT
130 Adelaide Street West
Suite 2600
Toronto, Ontario
M5H 3P5

Monique Jilesen
EMAIL: mjilesen@litigate.com

TEL: (416)865-2926
FAX: (416)865-2851

Lawyers for the Defendants,
1945087 Ontario Inc. and
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KRAMER SIMAAN DHILLON LLP
Litigation Counsel
120 Adelaide Street West
Suite 2100
Toronto, Ontario
M5H 1T1

Micheal Simaan #41396A
EMAIL: msimaan@kramersimaan.com

TEL: (416)601-6820
FAX: (416)601-0712

Lawyers for the Defendants,
Liberty Development Corporation and
1834371 Ontario Inc.