



Court File # CV-08-361906

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE
EDWARD BELOBABA

) *Tues* DAY, THE *24*
)
) DAY OF JUNE, 2014

BETWEEN:

LEE KENNEDY and BEKALLA YUSUF

Plaintiffs

-and-

TORONTO HYDRO-ELECTRIC SYSTEM LTD. and CITY OF TORONTO

Defendants

-and-

GONTE CONSTRUCTION LIMITED and CITY OF TORONTO

Third Parties

Proceeding under the Class Proceedings Act, 1992

JUDGMENT

THIS MOTION, made by the plaintiffs for an order approving the proposed settlement, and approving class counsel fees and disbursements, was heard on this day at the Court House, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the affidavit of Marietta Underwood, sworn May 13, 2014;
- (b) the affidavits of Kirsten Franz, sworn June 5, 2014 and June 16, 2014;
- (c) the affidavit of Andrew Eckart, sworn June 10, 2014;
- (d) the affidavit of Lee Kennedy, sworn June 10, 2014;
- (e) the affidavit of Bekalla Yusuf, sworn June 11, 2014;
- (f) the letters from The Children's Lawyer and the Public Guardian and Trustee;
- (g) the Distribution Plan attached as Schedule "A"; and
- (h) the order of Justice Lax dated April 23, 2009 certifying this action as a class proceeding,

AND ON HEARING the submissions of Class Counsel, counsel for State Farm Insurance Company and RBC Insurance, counsel for the defendants and third party, and being advised that The Children's Lawyer and the Public Guardian and Trustee have no objections to the form of this Judgment and Distribution Plan,

AND ON BEING ADVISED that all objections delivered to Kirsten Franz have been delivered to the Court and duly considered,

AND ON BEING FURTHER ADVISED that:

- (a) the parties consent to this order;
- (b) Marsh Risk Consulting Canada consents to being appointed as Administrator; and
- (c) Reva Devins consents to being appointed as Arbitrator;

1. THIS COURT ORDERS that, for the purposes of this Judgment and Distribution Plan, the following definitions apply:

- (a) “**2 Secord Avenue**” means the Units located at 2 Secord Avenue, in Toronto, Ontario which include, but is not limited to, the following:

| Description of Units | Number of Units |
|------------------------------|------------------|
| bachelor apartment | 1 |
| junior one bedroom apartment | 85 |
| one bedroom apartment | 130 |
| two bedroom apartment | 88 |
| three bedroom townhouse | 23 |
| TOTAL | 327 Units |

- (b) “**Action**” means the action *Kennedy et al. v. Toronto Hydro-Electric System Ltd.*, court file no. CV-08-361906, but not including crossclaims and third party claims;
- (c) “**Administrator**” means Marsh Risk Consulting Canada or its successor appointed from time to time by the Court;
- (d) “**Arbitrator**” means Reva Devins or her successor appointed from time to time by the Court;
- (e) “**Claim Form**” means the claim form approved by the Court for use under this **Distribution Plan** attached to the **Judgment** as Schedule “B”;
- (f) “**Claims Bar Date**” means **October 3, 2014**;
- (g) “**Class**” or “**Class Members**” means those persons (who did not opt out of this action) who on July 20, 2008:
- (a) rented a Unit; or
 - (b) ordinarily resided in a Unit; or
 - (c) was present in a Unit but was not ordinarily resident in that Unit; or
 - (d) owned or had an interest in property located in or on a Unit; or
 - (e) owned one or more of the Units.
- excluding Toronto Hydro and Gonte Construction Limited, and their officers, directors, servants or agents and also excluding employees of the City of Toronto who in the course of their employment with the fire department attended at 2 Secord Avenue on July 20, 2008;
- (h) “**Class Counsel**” means Sutts, Strosberg LLP , Charney Lawyers and Hotz Lawyers;
- (i) “**Class Counsel’s Fees**” means the award for fees, disbursements, costs, GST, HST and other applicable charges to Class Counsel awarded in the **Judgment** in this **Action**;
- (j) “**Cost of Administration**” means a fixed fee of \$insert for notice, fees, disbursements and taxes for the **Administrator** and **Arbitrator**;

- (k) “*CJA*” means the *Court of Justice Act*;
- (l) “*CPA*” means the *Class Proceedings Act, 1992*;
- (m) “**Court**” means the Ontario Superior Court of Justice;
- (n) “**Distribution Plan**” means this plan and the procedures set out herein for distributing the **Settlement Amount** less **Class Counsel’s Fees** and the **Costs of Administration**;
- (o) “**DSM-5**” means American Psychiatric Association Diagnostic and Statistical Manual, 5th edition;
- (p) “**Insurer**” means any insurance company of any of the Class Member(s) who did not opt out of the Action.
- (q) “**Judgment**” means the judgment of Justice Belobaba approving the settlement of this Action and the **Distribution Plan**;
- (r) “**Ministry of Health**” means the Ministry of Health and Long-Term Care;
- (s) “**Minor**” or “**Minors**” means a person, who as of the date of this judgment, has not attained the age of 18 years;
- (t) “**Notice**” means a notice of the **Settlement** of this Action substantially in the form of the **Notice** attached to the **Judgment** as Schedule “C”;
- (u) “**Notice Program**” means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of this **Judgment**;
- (v) “**Released Claims**” means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses, of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this Action or which could have been asserted in this Action concerning the explosion and fire on July 20, 2008 at **2 Secord Avenue**, but excluding counterclaims, crossclaims and third party claims and also excluding any claims against individuals or entities with whom Toronto Hydro, the City of Toronto and/or Gonte Construction Limited have entered into tolling agreements;
- (w) “**Released Parties**” means Toronto Hydro, the City of Toronto, Gonte Construction Limited and their employees, officers, directors, servants, agents and insurers but does not include any individual or entities with whom any of Toronto Hydro, the City of Toronto and/or Gonte Construction Limited have entered into tolling agreements;

- (x) **"Settlement Amount"** means \$6,526,679.01;
- (y) **"Toronto Hydro"** means Toronto Hydro-Electric System Ltd., and its employees, officers, directors, servants and agents; and
- (z) **"Unit"** means an apartment or townhouse or other utilizable space located at **2 Secord Avenue**, as particularized in subparagraph 1(a).

2. THIS COURT ORDERS AND DECLARES that the Settlement Amount and the Distribution Plan, annexed hereto as Schedule A, which is incorporated by reference into this Judgment, are fair, reasonable and in the best interests of the Class and are hereby approved. The defendants, third party, nor their insurer or insurers, will not be liable to any Class Members for any amount in excess of the Settlement Amount.

3. THIS COURT DECLARES that Toronto Hydro and/or its insurers will deliver the Settlement Amount to Sutts, Strosberg LLP, in trust within ten days of the approval of this settlement, after which postjudgment interest will be payable at the rate provided for by the *CJA*.

4. THIS COURT ORDERS that the Administrator and the Arbitrator are appointed, each with the duties and responsibilities set out in the Distribution Plan and in this Judgment.

5. THIS COURT ORDERS AND DECLARES that, on or before July 3, 2014, the Notice Program, giving Notice of this Judgment and the Distribution Plan, must be implemented as follows by the Administrator:

- (a) posting the Notice in the laundry room at 2 Secord, subject to the consent of the property manager;
- (b) placing the Notice under the door of every Unit at 2 Secord, subject to the consent of the property manager;

- (c) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (d) emailing the Notice to the 2 Secord Tenants' Association;
- (e) delivering the Notice by regular mail to every person who has not provided an email address to Class Counsel and has an address that is not located at 2 Secord;
- (f) posting the Notice at www.secordclassaction.com;
- (g) sending the Notice by email to the Public Trustee and the Children's Lawyer; and
- (h) providing the Notice to any other person who requests it.

6. THIS COURT DECLARES that the Notice Program provided for in paragraph 5 satisfies the requirements of s. 17 of the *CPA*.

7. THIS COURT ORDERS AND APPROVES the Claim Forms generally in the form of the attachments hereto at Schedule "B".

8. THIS COURT ORDERS that each Class Member who qualifies to participate in the Distribution Plan must submit to the Administrator a Claim Form and the required supporting documentation on or before the Claims Bar Date in accordance with the Distribution Plan.

9. THIS COURT ORDERS that the Administrator shall pay any award to a Class Member who is a Minor to the Accountant of the Superior Court of Justice to the credit of the Minor, until the Minor attains the age of 18 years, at which time the Accountant shall pay the amount to the Class Member without any further order of the Superior Court of Justice.

10. THIS COURT ORDERS AND DECLARES that if a Class Member does not submit a Claim Form to the Administrator on or before the Claims Bar Date, that the Class Member, and each of their respective heirs, executors and assigns shall be forever barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this Judgment.

11. THIS COURT ORDERS AND DECLARES that each Class Member, Insurers and each of their respective heirs, executors, administrators, estate trustees and assigns:

- (a) fully and finally releases the Released Parties from the Released Claims;
- (b) shall not commence or continue against any Released Party any action or take any proceeding relating in any way to or arising from the Released Claims; and
- (c) shall not commence or continue against any person, any action or take any proceeding relating in any way to or arising from the Released Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any Released Party.

12. THIS COURT ORDERS AND DECLARES that each Class Member has released its Insurer or Insurers from the obligation to collect the insurance deductible(s) from the Defendants and distribute the deductible(s) to them.

13. THIS COURT ORDERS AND DECLARES that, unless a Class Member successfully opted out of the Action, in accordance with the certification order of Justice Lax made on April 23, 2009, this Judgment and the Distribution Plan are binding upon all of the Class Members and each of their respective heirs, executors, administrators and assigns including those who are minors, unborn persons or persons under a disability and the

requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this Judgment and the Distribution Plan are dispensed with.

14. THIS COURT ORDERS that Sutts, Strosberg LLP:
- (a) is authorized and directed to pay to Class Counsel the sum of \$1,982,541.00 for Class Counsel fees, including disbursements and taxes; and
 - (b) by further order, will pay to each of the Class Members the amounts specified in the Distribution Plan.

15. THIS COURT ORDERS that if any Class Member retains Class Counsel, or any other lawyer, to appeal from the Administrator's decision, Class Counsel, or any other lawyer, will be limited to charge, any Class Member or any Family Class Member, 7% of the increased amount awarded by the Arbitrator, plus reasonable disbursements and taxes and Sutts, Strosberg LLP is authorized and directed to pay these amounts.

16. THIS COURT ORDERS AND DECLARES that the Class Counsel fees, disbursements and taxes awarded in paragraphs 14 and 15 constitute a first charge against the Settlement Amount in favour of Class Counsel.

17. THIS COURT ORDERS that the total amount payable for the administration of this settlement to the Arbitrator and the Administrator, collectively, for their fees, disbursements and HST for the performance of their duties pursuant to this Judgment and the Distribution Plan is fixed at \$319,138.00 for fees, disbursements and HST payable by Sutts, Strosberg LLP to:

- (a) the Arbitrator, as time is incurred per month, to a maximum of \$30,000, inclusive of taxes and disbursements; and
- (b) the Administrator in the amount of \$60,000 per month for four months, inclusive of taxes and disbursements, and the balance when the Administrator is discharged by order of the Court.

18. THIS COURT ORDERS that Class Counsel, the Administrator or the Arbitrator may make a motion to the Court for directions.

19. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Arbitrator or Administrator or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Judgment or the administration of the Settlement Agreement, except with leave of the Court.

20. THIS COURT ORDERS that the subrogated claims of the Ministry of Health and Long Term Care and the Ontario Health Insurance Plan for the Class Members are dismissed with prejudice and without further costs and Sutts, Strosberg LLP may pay the sum of \$25,000 to the Ministry of Health and Long Term Care.

21. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action, excluding counterclaims, crossclaims and third party claims, be and is hereby dismissed, with prejudice and without further costs.

22. THIS COURT ORDERS that a copy of this Judgment and Distribution Plan shall be served upon The Children's Lawyer and the Public Guardian and Trustee by email.

JUSTICE

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 24 2014

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: *gr*

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