

Court File No. CV-12-448301-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

WASEEM EMAM and LYNN ELLWOOD

Plaintiff

and

BAY GRENVILLE PROPERTIES INC., LANTERRA DEVELOPMENTS LTD., TORO
ALUMINUM RAILINGS INC., AND H&R DEVELOPMENTS INC.

Defendants

Proceedings under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and among the Plaintiffs and the Defendants,
by and through their respective counsel.

BACKGROUND

Whereas:

- A. Murano Towers is a condominium consisting of 316 Units in the North Tower and 415 Units in the South Tower totaling 731 Units each of which has a balcony.

North Tower

- B. In April 2010, glass panels installed on the balconies on the North Tower shattered and fell into the street.
- C. In the period April 1, 2010 to November 31, 2010, occupancy of any balcony in the North Tower was prohibited.

- D. On June 20, 2011, the City of Toronto declared that the balconies in the North Tower were unsafe and sealed access to the balconies.
- E. In November 2022, the City of Toronto allowed use of the balconies in the North Tower.

South Tower

- F. On July 21, 2011, the City of Toronto declared the balconies in the South Tower were unsafe and sealed access to the balconies.
- G. In August 2012, the City of Toronto allowed used of the balconies in the South Tower.
- H. On October 3, 2013, the Justice Belobaba issued the Certification Order. He ordered that the Class Period was from April 1, 2010 to August 31, 2012.

AGREED TERMS

IT IS HEREBY AGREED, by and among the Parties that, subject to approval of the court, the Released Claims shall be fully and finally compromised, settled and released and the Action will be dismissed with prejudice upon the terms and conditions described below.

I. DEFINITIONS

1.1 In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this Section:

- (a) “Abatement” means an amount of money that an Owner of a Unit paid to a Tenant or credited to the Tenant during the Class Period.
- (b) “Action” means Action CV-12-448301-CP00.
- (c) “Administrative Expenses” means all of the expenses incurred in the administration of this Settlement. For greater certainty, Administration Expenses do not include Legal Fees.

- (d) “Agreement” means this Settlement Agreement.
- (e) “Approval Hearing” means the date scheduled to decide whether to approve the Agreement, fixing Legal Fees, approving the method of distribution to the Class Members and any other matters as the court deems appropriate.
- (f) “Approval Order” means the order of the court as a result of the Approval Hearing.
- (g) “Balcony” means an outdoor common element exclusively used by person(s) in a Unit.
- (h) “Certification Order” means Justice Belobaba’s certification order dated October 3, 2013.
- (i) “Charney” means Charney Lawyers PC.
- (j) “Claims Administrator” means a person appointed by the court at the Approval Hearing to administer the Settlement Agreement.
- (k) “Claims Commencement Date” means the date the Approval Order becomes final.
- (l) “Claim Form” means the form available on the Settlement Website authorized by the Court.
- (m) “Claims Period” means the period of time that Class Members may submit claims to the Claims Administrator commencing on the date the Approval Order becomes final and ends four (4) months thereafter.

- (n) “Class” and “Class Members” means: those persons, excluding the defendants and their senior officers and directors, who owned, rented and/or ordinarily resided in a Unit during the period commencing on April 1, 2010 to and including August 31, 2012.
- (o) “Class Counsel” means SSS and Charney.
- (p) “Class Period” means the period from April 1, 2010 to and including August 31, 2012.
- (q) “Condominium Corporation” means Toronto Standard Condominium Corporation No. 2037.
- (r) “Defendants” means Bay Grenville Properties Limited, Lanterra, Toro and H&R.
- (s) “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- (t) “Escrow Account” means the balance from Charney’s trust account transferred to the control of the Claims Administrator within ten (10) days after the Approval Order becomes final.
- (u) “Falling Glass” means Glass Paneling which was installed in balcony guards on Balconies at Murano Towers that shattered during the Class Period.
- (v) “Fourth Parties” means Pro-Temp Glass Inc., Clearview Industries Ltd., Allan Windows Systems Ltd., Columbia Highrise Windows and Railings Inc., Prelco Inc. Woodbridge Glass Distribution Inc., Lanterra Construction Management Ltd., ArchitectsAlliance, JIT Professional Services Inc., Siu H. Leung, May P. Leung, Essam Dabour and Mustapha Afif Chehabeddine.

- (w) “Glass Paneling” means the tempered glass installed in the balcony guards for each Balcony at Murano Towers.
- (x) “H&R” means H&R Developments Inc.
- (y) “Lanterra” means Lanterra Developments Ltd.
- (z) “Legal Fees” means Class Counsel fees, disbursements, and any applicable taxes thereon, as approved by the court.
- (aa) “Murano Towers” means a condominium consisting of the North Tower and the South Tower totaling 731 Units.
- (bb) “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after the court approves Legal Fees and any other expenses authorized by the Certification Order and the Approval Order.
- (cc) “Notice” means notice of the Approval Order authorized by the Court.
- (dd) “Notice Date” means the first date on which Notice is disseminated to Settlement Class Members.
- (ee) “Notice of Information” means a notice of the Agreement, Class Counsel’s request for Legal Fees, date, time and place of the Approval Hearing and the deadline for any objection to the Agreement.
- (ff) “Notice Plan” means the settlement notice program in accordance with the terms of section 7 herein and as approved by the court.
- (gg) “North Tower” means a 37 story high-rise building at 37 Grosvenor Street, Toronto comprised of 316 Units.
- (hh) “Owner” means each registered owner of a Unit during the Class Period.
- (ii) “Parties” means the Plaintiffs and the Defendants.
- (jj) “Plaintiffs” means Wasseem Emam and Lynn Elwood.

- (kk) “Released Claims” means any and all claims, demands, actions, causes of action, and suits based in whole or in part on or related to or arising from any of the facts alleged in the Action.
- (ll) “Released Parties” means the Defendants, the Third Parties, the Fourth Parties and their current and former affiliates, parents, related entities, successors and subsidiaries, directors, officers, agents, and employees.
- (mm) “Settlement Amount” means \$2,770,000.
- (nn) “Settlement Trust” means \$2,770,000 less Legal Fees, less any other expenses and amounts authorized by the court in the Approval Order or by this Agreement.
- (oo) “Settlement Website” means the website to be created by the Claims Administrator for purposes of communicating with Class Members and for otherwise facilitating the administration of this Settlement, including allowing Class Members to register and/or submit a Claim.
- (pp) “SSS” means Strosberg Sasso Sutts LLP.
- (qq) “South Tower” means a 45 story high-rise building at 38 Grenville Street, Toronto comprised of 415 Units.
- (rr) “Tenant” means a person that rented a Unit Balcony during the Class Period.
- (ss) “Third Parties” means Toronto Standard Condominium Corporation No. 2037, JTI Professional Services Inc., AGC North America Flat Glass Inc. (d/b/a AGC Glass Company of North America), Pro-Temp Glass Inc., Laurier Glass Ltd., Pilkington North American Inc., Shanghai Shine Glass Co. Ltd., Shanghai Shine Trading Co. Ltd., Changshu Xingfu Glass Building Material Co. Ltd., Essam Dabour, Romo Verslas and Construction Control Inc.

- (tt) “Toro” means Toro Aluminum Railings Inc.
- (uu) “Unit” means each of the 731 condominium residential units with a Balcony at Murano Towers.
- (vv) “Websites” means SSS’ website at <https://www.strosbergco.com/class-actions/murano> and Charney’s website at <https://www.charneylawyers.com/>.

II. SETTLEMENT CONSIDERATION

- 2.1 The Defendants shall pay the Settlement Amount into Charney’s trust account no less than thirty (30) days before the Approval Hearing.
- 2.2 The Defendants will not be required to pay more than the Settlement Amount, all in, under this Agreement and the Settlement Amount is the sole monetary payment that the Defendants will make under this Agreement.
- 2.3 Within ten (10) days after the Approval Order becomes final, Charney’s shall transfer to the Claims Administrator the Net Settlement Fund.
- 2.4 The Settlement Amount shall be the sole source of monetary funds under this Agreement.
- 2.5 The Settlement Amount shall not be released from Charney’s trust account until the Approval Order becomes final.
- 2.6 The Claims Administrator, subject to supervision and direction of the court, shall administer and/or oversee distribution of the Settlement Trust pursuant to this Agreement and the Approval Order.
- 2.7 The Claims Administrator is responsible for communicating with the Class Members regarding the distribution of the Settlement Trust.

- 2.8 All funds held in Charney's trust account shall be deemed to be in the custody of the court until such time as the funds are distributed pursuant to Approval Order or further order of the court.
- 2.9 Each Class Member shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Order.
- 2.10 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design, or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. Defendants also shall have no obligation to communicate with Class Members other than set out in this Agreement.
- 2.11 The Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.
- 2.12 No action shall lie against the Claims Administrator for any decision made in the administration of this Agreement without an order from the court authorizing such an action.

III. INFORMATION SUPPLIED OR TO BE SUPPLIED BY THE DEFENDANTS

3.1 The Defendants have provided evidence that there are:

- (a) in the North Tower, 316 Units each with a Balcony; and
- (b) in the South Tower, 415 Units each with a Balcony.

IV. SETTLEMENT TERMS – OWNER(S) AND TENANTS OF A UNIT DURING THE CLASS PERIOD

4.1 The gross settlement is based upon payment per Unit over the Class Period without consideration of the number of persons living in each Unit or the size of a Balcony.

4.2 Only one Class Member associated with the Unit need apply for payment. If more than one Class Member applies for payment for the same Unit, each Class Member will share equally in the payment per Unit.

4.3 The terms of the Agreement are based upon the following facts:

- (a) a fixed amount of at least \$3,000 per Unit in the North Tower and a fixed amount of at least \$1,600 per Unit in the South Tower.
- (b) If all Owners and Tenants of the North Tower and the South Tower do not file Claim Forms, any excess will be divided among the Class Members maintaining the ratio \$3,000 per Unit and \$1,600 per Unit.

4.4 If an Owner(s) and/or a Tenant(s) was in possession of the Unit for all or part of the Class Period, the Owner(s) and/or the Tenant(s) will share the payment based upon the month(s) each occupied the Unit during the Class Period.

4.5 If during the Class Period, the Owner(s) of the Unit gave the Tenant(s) an Abatement, the Owner(s) will be reimbursed for the Abatement in priority to the Tenant(s).

4.6 The Owner(s) and/or Tenant(s) may request a payment by submitting a Claim Form obtained from the Settlement Website during the Claim Period. Class

Members who are making a claim must prove she/he/it or the Tenant was the Owner or occupier of the Unit during the Class Period. This Claim must be approved to the satisfaction of the Claims Administrator. She or he must provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him.

- 4.7 The Claims Administrator shall, within fifteen (15) days of receipt of each Claim Form, verify that each person who submits a Claim Form is a Class Member.
- 4.8 If the Claims Administrator determines a Claim Form is defective, the Claims Administrator shall, within fifteen (15) days of receipt, notify the person of the defect and give the person thirty (30) days to cure the defect. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect.
- 4.9 The Administrator's decision is final and there is no appeal from the Administrator's decision.

V NOTICE OF APPROVAL HEARING AND OBJECTIONS

- 5.1 Class Members will be given Notice of Information by:
 - (a) Class Counsel posting the Notice of Information on the websites.
 - (b) Class Counsel sending Notice of Information to each person who registered with Class Counsel and provided a valid e-mail address.
 - (c) Class Counsel distributing the Notice of Information to each Unit at the North Tower and the South Tower.
 - (d) Class Counsel sending Notice of Information to the Condominium Corporation and requesting that it post the Notice Information on its website.
 - (e) a media campaign.

- 5.2 Any Class Member who objects to the Agreement must send his, her or its objection to:

Sarkis Isaac
Melo LLP
2679 Howard Avenue, Suite 200
Windsor, ON N8X 3X2
Attention: Murano Class Action
Fax: 519.250.1929
Email: classaction@melollp.com

- 5.3 Sarkis Isaac will report to the court by affidavit before the Approval Hearing.

VI. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM

- 6.1 The court will appoint the Claims Administrator, approve the Claims Administrator's fees and disbursements and approve any other payment(s) out of the Settlement Amount.
- 6.2 After the Approval Order becomes final, the Claims Administrator is responsible for distributing the notice of the Approval Order.
- 6.3 The claims program shall only be administered through the Settlement Website that the Claims Administrator will establish. The Claims Administrator may pay Class Members by cheque sent by mail or in a method approved by the court.
- 6.4 Class Counsel shall provide the Claims Administrator with Class Counsel's registration data including names and last known email addresses of Class Members within ten (10) business days after the Approval Order.
- 6.5 The Claims Administrator shall perform the functions specified in this Agreement including, but not limited to: overseeing administration of the Settlement Fund; establishing and operating the settlement website; evaluating and responding to Claim Forms; and distributing compensation to Class Members.
- 6.6 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:

- (a) establishing and maintaining the Settlement Website that, among other things, allows Class Members to submit Claims Forms electronically;
- (b) responding to all valid inquiries;
- (c) reviewing, processing and determining the validity of all Claim Forms;
- (d) at the close of the Claims Period, paying to the Class Members, either by electronically or by mailing a cheque, in the amounts, due in accordance with the Approval Order; and
- (e) provide a final report to the court, Class Counsel and Defendants' Counsel.

VII. LEGAL FEES

- 7.1 Class Counsel will seek approval of Legal Fees in the amount of 30% of the Settlement Amount, plus disbursements plus HST.
- 7.2 The Defendants acknowledge that they take no position on the motion for approval of the Legal Fees. They will have no involvement in the approval process to determine the amount of Legal Fees. They will not make any submissions to the court concerning Legal Fees.
- 7.3 The amounts owing to Class Counsel will be paid from the Settlement Fund, after the Approval Order becomes final.

VIII. SETTLEMENT APPROVAL PROCESS

Approval Hearing

- 8.1 The Plaintiffs will seek an Approval Order from the court. The Defendant will consent to the Approval Order.

Class Members' Claims

- 8.2 Because of the Approval Order, the Plaintiffs and each Class Member shall be deemed to have, and by operation of the Approval Order shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims.

Total Satisfaction of Released Claims

- 8.3 All benefits offered or obtained pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who did not opt-out of the Action.
- 8.4 The Release shall be effective with respect to all Class Members regardless of whether those Class Member ultimately filed a Claim Form or receive compensation under this Agreement or under the Approval Order.

Class Counsel Acted Independently

- 8.5 Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement.

IX. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

- 9.1 Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement. The persons signing this Agreement on behalf of each Party warrants that he/she is authorized to sign this Agreement on behalf of that Party.

- 9.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of this Agreement and the Approval Order. Class Counsel will seek the Approval Order. The Defendants will assist Class Counsel in preparing court materials for the hearing of the Approval Order.

X. EFFECTIVE DATE AND TERMINATION

- 10.1 In the event that the court refuses to approve the Agreement or refuses to issue the Approval Order, the Defendants may, at their sole discretion, terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.
- 10.2 In the event this Agreement is terminated, the Settlement Amount, together with any interest or other income earned thereon, if any, less any advertising fees paid or due and/or less any fees owing to the Administrator and/or to Sarkis Isaac and/or less disbursements incurred by Class Counsel notifying the Class and/or other amounts authorized by the Court shall be returned to counsel for Toro, Blaney McMurtry LLP.
- 10.3 Except as otherwise provided herein, in the event the Agreement is terminated or the Approval Order does not become final, the Parties to this Agreement, including all Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement and the execution of any term sheet between the Parties and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement, any term sheet, and any related orders had not been entered into. In addition, the Parties agree that in the event the Settlement is terminated:
- (a) Any orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition; and

- (b) this Agreement shall become null and void, and the fact of this Agreement shall not be used or cited by any person or entity, including in any contested proceeding.

XI. MODIFICATION OF THE AGREEMENT

- 11.1 The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the court.

XII. MISCELLANEOUS PROVISIONS

NO ADMISSION

- 12.1 This Agreement is for settlement purposes only. If the Agreement is terminated, neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendants or any admissions by the Defendants of any claim or allegation made in any action or proceeding against the Defendants. If this Agreement is terminated and becomes null and void, any portion of this settlement shall have no further force and effect and shall not be offered in evidence or used in the Action or any other proceeding. This Agreement shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce the terms of the Agreement. Information provided by the Defendants to the Plaintiff and Class Counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever.

GOVERNING LAW

- 12.2 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

- 12.3 This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Agreement is sought.

COUNTERPARTS

- 12.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

ARM'S-LENGTH NEGOTIATIONS

- 12.5 The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. All Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

CONTINUING JURISDICTION

- 12.6 The court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Agreement.

CONFIDENTIALITY

12.7 This Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Agreement are to be kept confidential and not disclosed until the Agreement is filed with the Court.

BINDING EFFECT OF SETTLEMENT AGREEMENT

12.8 This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

NULLIFICATION

12.9 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

EXTENSIONS OF TIME

12.10 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to court approval as to court dates).

SERVICE OF NOTICE

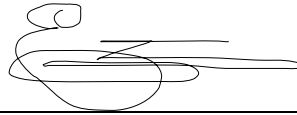
12.11 Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing.

AUTHORITY TO EXECUTE SETTLEMENT AGREEMENT

12.12 Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of March , 2023.

ON BEHALF OF BAY GRENVILLE PROPERTIES LIMITED, LANTERRA DEVELOPMENTS LTD. AND H & R DEVELOPMENTS INC.



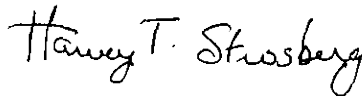
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ON BEHALF OF TORO ALUMINUM RAILINGS INC.



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