

Divisional Court File No.: 149/08
Superior Court File No.: 06-CV-311330CP

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

THE HONOURABLE JUSTICE SWINTON) MONDAY, THE 27th DAY
HONOURABLE JUSTICE HENNESSY)
HONOURABLE JUSTICE KARAKATSANIS) OF APRIL, 2009

EN:

2038724 ONTARIO LTD. and 2036250 ONTARIO INC.

Plaintiffs
(Appellants)

- and -

**QUIZNO'S CANADA RESTAURANT CORPORATION,
QUIZ-CAN LLC, THE QUIZNO'S MASTER LLC,
GORDON FOOD SERVICE, INC. and GFS CANADA COMPANY INC.**

Defendants
(Respondents)

Proceeding under the Class Proceedings Act, 1992

**ORDER
(Appeal from Certification)**

THIS APPEAL, made by the Plaintiffs/Appellants from an Order of the Honourable Justice P. Perell dated March 4, 2008 refusing to certify this action as a class proceeding was heard on November 19, 20 and 21, 2008, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Notice of Appeal, Appeal Books, Exhibit Books, Compendia, Factums and Briefs of Authorities of the parties, filed, and on hearing the submissions of counsel for the parties, for written reasons released this day,

1. **THIS COURT ORDERS** that the appeal is hereby allowed and the Order of Justice Perell refusing to certify the class action is set aside.
2. **THIS COURT ORDERS** that the action is conditionally certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, subject to approval of a revised litigation plan by Justice Perell.
3. **THIS COURT ORDERS** that, subject to approval of a revised litigation plan, the following common issues are to be certified:
 - (a) Have the Quiznos Defendants, or any of them, engaged in conduct contrary to Section 61(1) of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Supp.)?
 - (b) Have the Defendants, or any of them, engaged in conduct that amounts to civil conspiracy?
 - (c) Have the Quiznos Defendants, or any of them, engaged in conduct which constitutes a breach of their contractual obligations to the Class Members?
 - (d) Have the Class Members suffered loss or damage as a result of any of the conduct referred to in issues (a), (b) ^{✓ (c)} or (d) ^{✓ RS.}? If so, what is the appropriate measure or amount of such loss or damages?
 - (e) Should the Court award an aggregate assessment of monetary relief on behalf of some or all Class Members? If so, what is the amount of the

aggregate assessment and how should the Class Members share in the award?

- (f) Should the defendants pay punitive, exemplary or aggravated damages to the Class Members? Should such damages be assessed in the aggregate? If so, what is the amount of such damages including pre- and post-judgment interest thereon?
- (g) Are the Class Members entitled to recover from the Quiznos Defendants the full costs of their investigations and the full costs of this proceeding, including contingent legal fees on a complete indemnity basis, under section 36(1) of the *Competition Act*?

4. **THIS COURT ORDERS** that if the parties cannot agree on costs, the Appellants may make written submissions on costs within 15 days; the Respondents may respond within a further 15 days; reply, if any, within 7 days.

Rosemani Alshak
Assistant Registrar

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ON / BOOK NO: 14
LE / DANS LE REGISTRE NO.:
JUN 11 2009 103
PER / PAR:
<i>PA</i>

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

Proceeding commenced at Toronto

**ORDER
(Appeal from Certification)**

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Solicitors for the Defendants (Respondents)
Quiznos Canada Restaurant Corporation, Quiz-Can
and The Quiznos Master LLC