

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N:

(Court Seal)

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1654

Plaintiff

and

TRI-CAN CONTRACT INCORPORATED, HARALAMBOS VLAHOPOULOS,
912547 ONTARIO INC., JOSE DE OLIVEIRA, LIDIO ROMANIN
CONSTRUCTION COMPANY LIMITED O/A LAR MANAGEMENT,
ANTHONY ROMANIN, CPL INTERIORS LTD.,
MOHAWK INDUSTRIES, INC., JANE SHACKLETON,
1082601 ONTARIO INC. and ViFLOOR CANADA LTD.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date April 27, 2021 Issued by **Heather A. Michaud**
Registry Officer/Agente du Greffe
(Registry Officer)

Address of 180 Queen Street West, Suite 200
local office: Toronto, Ontario
M5V 3L6

TO: **TRI-CAN CONTRACT INCORPORATED**
110 Shields Court
Markham ON L3R 9T5

AND TO: **HARALAMBOS VLAHOPOULOS**
18 Oxbow Road
Toronto ON M3B 2A2

AND TO: **912547 ONTARIO INC.**
158 Don Hillock Drive, Unit 7
Aurora ON L4G 0G9

AND TO: **JOSE DE OLIVEIRA**
942 Lake Drive North
Georgina ON L4P 3E9

AND TO: **LIDIO ROMANIN CONSTRUCTION COMPANY LIMITED**
O/A LAR MANAGEMENT
2683 Steeles Avenue West
Toronto ON M3J 2Z8

AND TO: **ANTHONY ROMANIN**
1 Prince Charles Drive
Toronto ON M6A 2H1

AND TO: **CPL INTERIORS LTD.**
1252 Speers Road, Unit 10
Oakville ON L6L 5N9

AND TO: **MOHAWK INDUSTRIES, INC.**
160 S. Industrial Blvd
Calhoun GA 30701
USA

AND TO: **JANE SHACKLETON**
42 Player Place
Stouffville ON L4A 1M1

AND TO: **1082601 ONTARIO INC.**
146 Thirtieth Street, Suite # 204
Etobicoke ON M8W 3C4

AND TO: **ViFLOOR CANADA LTD.**
10 Queen Elizabeth Blvd, Unit 1
Toronto ON M8Z 1L8

I. CLAIM

A. Relief sought

1. The plaintiff claims on its own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 below):

(a) an order certifying this action as a class proceeding and appointing the plaintiff as a representative plaintiff for the Proposed Class;

(b) a declaration that the defendants conspired, agreed, or arranged with each other to commit fraud and rig bids for condominium refurbishment services (“**condominium refurbishment**”) in the Greater Toronto Area (“**GTA**”) and surrounding areas during the Class Period (as defined in paragraph 7 below);

(c) damages or compensation in an amount not exceeding \$50,000,000 for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (the “*Competition Act*”);

(d) prejudgment and judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7;

(e) investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*;

(f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Court Rules*, SOR/98-106; and

(g) such further and other relief as this Honourable Court deems just.

II. NATURE OF THE ACTION

2. This action arises from an alleged conspiracy by the defendants and their unnamed co-conspirators to rig bids for condominium refurbishment in the GTA and surrounding areas, and other place or places unknown.

3. The defendants and their unnamed co-conspirators colluded to manipulate prices for condominium refurbishment.

4. As a result of their actions, the defendants and their unnamed co-conspirators successfully rigged bids and raised the prices of condominium refurbishment in the GTA and surrounding areas during the Class Period.

5. As a result, the plaintiff and the Proposed Class suffered loss and damage caused by the conspiracy.

III. THE PARTIES

A. Plaintiff

6. The plaintiff, Toronto Standard Condominium Corporation No. 1654, is a non-profit condominium corporation created in January 2005 under the *Condominium Act, 1998*, SO 1998, c 19 (“*Condominium Act*”), comprising 194 residential units in a single high-rise building in the City of Toronto. As described below, the plaintiff paid for condominium refurbishments during the Class Period.

7. The plaintiff seeks to represent the following class (the “**Proposed Class**”):

All corporations in Ontario, within the meaning of the *Condominium Act, 1998*, SO 1998, c 19, that paid for condominium refurbishments in the GTA and surrounding areas between January 1, 2006 and December 31, 2016 or such other date as the Court determines appropriate (“**Class Period**”). Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

8. Notice has been provided to the plaintiff’s unit owners pursuant to section 23 of the *Condominium Act*.

B. Defendants

(i) TRI-CAN Contract Limited

9. The defendant TRI-CAN Contract Incorporated (“**TRI-CAN**”) is a corporation with its registered office in Markham, Ontario. TRI-CAN provides refurbishment services to condominium corporations throughout the GTA and surrounding areas.

10. The defendant Haralambos (Bob) Vlahopoulos is an individual who lives in Toronto, Ontario. He is a director, officer and owner of TRI-CAN. TRI-CAN is controlled by, and is an authorized agent for, Mr. Vlahopoulos.

(ii) 912547 Ontario Inc. (cob JCO & Associates)

11. The defendant 912547 Ontario Inc. (“**JCO**”) is a corporation with its registered office in Aurora, Ontario, and carries on business under the registered business name JCO & Associates. JCO provides refurbishment services to condominium corporations throughout the GTA and surrounding areas.

12. The defendant Jose De Oliveira is an individual who lives in Georgina, Ontario. He is a director, officer and owner of JCO. JCO is controlled by, and is an authorized agent for, Mr. De Oliveira.

(iii) Lidio Romanin Construction Company Limited

13. The defendant Lidio Romanin Construction Company Limited o/a LAR Management (“**LAR**”) is a corporation with its registered office in Vaughan, Ontario. LAR provides refurbishment services to condominium corporations throughout the GTA and surrounding areas.

14. The defendant Anthony (Tony) Romanin is an individual who lives in Toronto, Ontario. He is a director and owner of LAR. LAR is controlled by, and is an authorized agent for, Mr. Romanin.

(iv) CPL Interiors Ltd.

15. The defendant CPL Interiors Ltd. (“**CPL**”) is a corporation with its registered office in Oakville, Ontario. CPL provides refurbishment services to condominium corporations throughout the GTA and surrounding areas.

(v) Mohawk Industries, Inc.

16. The defendant Mohawk Industries, Inc. (“**Mohawk**”) is an American company incorporated under the laws of Delaware with its headquarters in Calhoun, Georgia. It holds itself out as the world’s largest flooring company and the world’s largest rug manufacturer. Mohawk offers flooring solutions for the hospitality environment under the brand “Durkan”.

17. The defendant Jane Shackleton is an individual who lives in Toronto, Ontario. From 2004 to 2013, she was a Sales Design Consultant for ViFloor Canada Ltd., and from 2013 to the present, she was a Manufacturers Sales Agent Representative for Durkan.

(vi) 1082601 Ontario Inc. (cob Maddan Group)

18. The defendant 1082601 Ontario Inc. (“**Maddan**”) is a corporation with its registered office in Etobicoke, Ontario, and carries on business under the name Maddan Group. Maddan holds itself out as an interior design consultancy servicing the Greater Toronto Area.

(vii) ViFloor Canada Ltd.

19. The defendant ViFloor Canada Ltd. (“**ViFloor**”) is a corporation with its registered office in Toronto, Ontario. ViFloor holds itself out as an expert in commercial and multi-unit residential matting and flooring.

C. Unnamed Co-Conspirators

20. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. Other persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are presently not known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. For the purposes of this claim, the term “co-conspirator” refers to any co-conspirator identified by name above and any unnamed co-conspirator.

D. Joint and Several Liability

21. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

22. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

IV. THE PLAINTIFF'S EXPERIENCE

23. On June 9, 2014, the plaintiff (through its representative, Flora Di Menna Designs Inc.) issued a call for tenders for the renovation of its corridors and party room.

24. The closing date of the tender was June 23, 2014.

25. In response to the call for tenders, the plaintiff's representative received bids from the defendants JCO, LAR, and TRI-CAN, and from Connoisseur Painting, believed to be a trade name or corporate relation of the defendant CPL.

26. JCO submitted the lowest tender, based on the original tendering package. LAR submitted the second lowest tender.

27. The plaintiff's board and Flora Di Menna Designs Inc. interviewed JCO and LAR in respect of their bids.

28. Following some post-tender revisions to the scope of work, and clarifications provided by the two contractors, LAR's final price was lower than JCO's final price.

29. Ultimately, the plaintiff's board awarded the contract to LAR.

30. The contract price was \$940,616, inclusive of tax, and the contract was executed on September 17, 2014.

31. On or about May 11, 2016, the plaintiff received an order for the written return of information and production of records in respect of the condominium refurbishment, pursuant to sections 11(1)(c) and (b) of the *Competition Act* ("**Production Order**").

32. The plaintiff and approximately 100 other members of the Proposed Class incurred expenses investigating and responding to the production order.

V. THE CONDOMINIUM REFURBISHMENT INDUSTRY

33. A residential condominium is a system of ownership in which one legal entity, the condominium corporation, governs communal living within a multi-unit building. Condominium corporations are regulated by the *Condominium Act*, and by their declaration, by-laws, rules, and regulations.

34. Condominiums are typically comprised of individual units and common elements. Common elements are shared parts of the condominium owned by all the unit owners, and include any part of the property that is located inside the land boundaries of the condominium plan but is not a unit. Common elements include grounds, building lobbies, corridors, and other shared amenities.

35. The condominium corporation, through its board, acts on behalf of the owners collectively to maintain and repair the common elements.

36. Condominium corporations are unique in that they are not for profit and are typically run by lay volunteers. In a given condominium, renovations to common elements are infrequent. Accordingly, condominium corporations, as purchasers of condominium refurbishments, are less equipped to assess the competitiveness of bids than commercial purchasers of construction and refurbishment services. A fair and competitive tendering process is fundamental to the consumer-protection objectives of the regulatory scheme.

37. The condominium refurbishment market in the GTA and surrounding areas lends itself to anticompetitive conduct. The defendant companies have considerable market share and, in a concentrated market in which the defendants trade on their specialized skills, knowledge, and experience, there are considerable barriers to entry for would-be competitors. These factors, together with the susceptibility of unit owners and condominium corporations to anticompetitive pricing, facilitated the defendants' efforts to rig bids, increase prices, and take greater profits for condominium refurbishment projects.

38. Condominium refurbishment services are substitutable. Hence, but for the collusion alleged herein, the defendants would have competed with one another leading to lower prices for condominium refurbishment.

VI. INVESTIGATIONS INTO ANTI-COMPETITIVE CONDUCT

39. In or before 2014, a confidential informant made a whistleblower complaint to the Canadian Competition Bureau (the “**Bureau**”) about anticompetitive conduct in the GTA’s condominium renovation industry. In response to the complaint, the Bureau launched a widespread investigation into an alleged bid-rigging conspiracy in the condominium refurbishment market.

40. In the course of the investigation, the defendant Mohawk made an immunity application, which resulted in the issuing of search warrants in October 2014. The defendant Jane Shackleton sought and obtained individual immunity from prosecution. Subsequently, the defendant CPL applied for leniency on the evidence of its witness, Richard Lyons, a director and officer of CPL.

41. The Bureau obtained additional search warrants in relation to the alleged bid-rigging conspiracy in March and July 2015.

42. The warrants allege that:

- (a) the defendants CPL, JCO, LAR and Tri-Can, and others known and unknown, were parties to an agreement or arrangement with respect to condominium refurbishment services that unduly lessened competition; and
- (b) the agreement or arrangement was facilitated by the pricing practices of the defendants Maddan (including as agent for Mohawk) and ViFloor.

43. As part of the Bureau's investigation, on May 10, 2016, the Bureau sought an order from the Ontario Superior Court compelling 141 condominium corporations across the GTA, including the plaintiff, to produce records relating to "the budget, tendering, bidding, negotiating and awarding of a contract for renovations to the common areas of the condominium corporation's building(s)."

44. On May 11, 2016, the Ontario Superior Court ordered the plaintiff and others to produce these records.

45. While the details of the investigation were sealed by court order, the investigation targeted contractors hired to oversee and carry out work on common areas such as lobbies, party rooms or parking garages, as well as suppliers who provide the goods used in such renovations. The investigation concerned contracts dating back to 2006.

46. On March 29, 2021, the Bureau announced that it laid multiple criminal charges against the defendants, in connection with an alleged conspiracy to commit fraud and rig bids for condominium refurbishment in the GTA. The charges include conspiracy to rig bids, conspiracy to commit fraud, and fraud over \$5,000.

47. Specifically, as a result of the Bureau's investigation, charges were laid against TRI-CAN and Bob Vlahopoulos, JCO and Jose De Oliveira, and LAR and Tony Romanin for conspiracy to rig bids, conspiracy to commit fraud, and fraud over \$5,000. CPL was charged under the conspiracy provision of the *Competition Act*.

48. The Bureau alleges that the accused parties conspired to commit fraud and rig bids for refurbishment contracts issued by private condominium corporations in the GTA between 2009 and 2014.

49. The condominium corporations and the condominium owners who fund them are the alleged victims, who are alleged to have paid higher prices for goods and services as a result of the anticompetitive conduct of the defendants and their co-conspirators.

VII. DEFENDANTS CONSPIRED TO RIG BIDS

A. The Defendants Breached Part VI of *Competition Act*

50. From as early as 2006, the defendants and their unnamed co-conspirators have engaged in a conspiracy to rig bids in respect of condominium refurbishments in the GTA and surrounding areas, and other place or places unknown, contrary to sections 45 and 47 of the *Competition Act*.

51. The defendants and their unnamed co-conspirators carried out the conspiracy by agreeing that, in response to calls for bids or tenders, one or more of them would (a) not submit a bid; (b) withdraw a bid; or (c) submit a bid arrived at by agreement.

52. The plaintiff and Proposed Class were not informed before bidding about the agreement made between the defendants.

53. The defendants and their unnamed co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in Ontario to discuss coordinating prices;
- (b) agreeing, during those meetings, conversations, and communications, on the prices of condominium refurbishment;
- (c) agreeing, during those meetings, conversations, and communications, to rig bids for condominium refurbishment;
- (d) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments;
- (e) selling for the agreed upon prices, controlling discounts, rigging bids, and otherwise fixing, increasing, maintaining or stabilizing prices for condominium refurbishment;
- (f) allocating the supply of condominium refurbishment services, in the GTA and surrounding areas specifically;
- (g) accepting payment for condominium refurbishments in the GTA and surrounding areas at collusive and supracompetitive prices;
- (h) engaging in meetings, conversations, and communications for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging scheme;
- (i) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code

names, following security rules to prevent paper trails, abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants;

- (j) preventing or lessening, unduly, competition in the market in the GTA and surrounding areas for condominium refurbishment services;
- (k) exchanging commercially sensitive information; and
- (l) applying a coordinated strategy to increase the prices of condominium refurbishment in order to secure higher price levels for long-term contracts.

54. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular sections 45(1) and 47. The plaintiff claims loss and damage under section 36(1) of the *Competition Act* in respect of this unlawful conduct.

55. As a result of the unlawful conduct alleged herein, the plaintiff and other members of the Proposed Class paid supracompetitive prices for condominium refurbishment services.

56. The defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

57. Because the defendants' agreements, understanding, and conspiracies were kept secret, the plaintiff and other members of the Proposed Class were unaware of the

defendants' unlawful conduct during the Class Period, and they did not know at the time that they were paying supracompetitive prices for condominium refurbishment services.

VIII. DAMAGES

58. The conspiracy has had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to condominium refurbishment services sold directly or indirectly to the plaintiff and other members of the Proposed Class in the GTA and surrounding areas;
- (b) the price of condominium refurbishment services sold to the plaintiff and other members of the Proposed Class have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the plaintiff and other members of the Proposed Class have been deprived of free and open competition for condominium refurbishment services in the GTA and surrounding areas.

59. Condominium refurbishment services are an identifiable, discrete service. As a result, costs attributable to the unlawful enhancement of the prices of condominium refurbishment services can be traced through the distribution chain from condominium corporations to their respective unit owners.

60. By reason of the wrongful conduct alleged herein, the plaintiff and the members of the Proposed Class have sustained loss by having paid higher prices for

condominium refurbishment services than they would have paid in the absence of the illegal conduct of the defendants. As a result, the plaintiff and other members of the Proposed Class have suffered loss or damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

61. The plaintiff proposes that this action be tried at Toronto, Ontario.

April 23, 2021



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