

**TO: Purchasers in the World Centre Project (Class Litigants)**

**Landy, Marr & Associates - Kings Land Developments Inc. Class Action**

**NEWSLETTER No. 5  
(July 16, 2003)**

This Newsletter advises the Class Litigants of the progress and latest developments in this action.

**1. JUSTICE NORDHEIMER'S ORDER OF JUNE 27, 2003**

We attended before Justice Nordheimer on June 27, 2003.

Levitt Beber has commenced a Third Party claim against Kam Sang Company Inc. ( accompany apparently owned by Henry Lam's brother). Justice Nordheimer ordered further particulars of the allegations be provided by Levitt Beber to Kam Sang Company Inc.

Mr. Justice Nordheimer also allowed us to amend the Statement of Claim to clarify our allegations and to allow us to name personally the former partners of Levitt Beber, who deny they were partners and deny personal liability to the purchasers for the debts of Levitt, Beber. These partners are Steven H. Goldman, Steven Pearlstein and Lawrence M. Weinberg. Mssrs Levitt and Beber do not deny they were partners of the firm.

Mr. Justice Nordheimer's Order authorized the Plaintiffs to continue the Class Proceedings against Defendants Henry Lam and Linda Lam, who have declared bankruptcy . He further ordered that any proceeds from the said claims against Henry Lam and Linda Lam shall be for the benefit of the Purchasers, and further ordered that the stay provided for in the *Bankruptcy Insolvent Act*, no longer operates in respect of Henry Lam and Linda Lam.

**2. THE EXISITNG CASE TIMETABLE**

**(i) The Trial**

The trial in this action is fixed for February 9<sup>th</sup>, 2004.

**(ii) The Pre-trial**

The Pre-trial is fixed for November 24, 2003. Justice Nordeimer fixed this at the hearing of June 27, 2003. A pre-trial conference is an informal meeting between counsel for the parties and a Judge, who will not be the Judge at the trial should the action proceed to trial. Prior to the pre-trial, counsel for each party prepares separate written memorandum for the pre-trial judge outlining the positions of the their clients. The purpose of the pre-trial is to discuss all of the issues in the action, and to canvass the possibility of settlement, or at least narrow the issues for trial.

While the opinion of the pre-trial judge is not binding on the parties, it certainly is persuasive, particularly if the judge is experienced. After hearing submissions from each counsel, the Judge typically gives his opinion on what the likely outcome of the case would be, if he had heard the case before him.

### **(iii) Summary Judgment**

Mr. Goldman and Mr. Pearlstein are bringing a motion for Summary Judgment to seek to dismiss the action against them. They deny they were partners of the firm and seek to have the case summarily dismissed as against them.

The schedule with respect to the Summary Judgment motion is as follows::

- i) Motion Record and supporting affidavit to be delivered by the moving parties by July 28<sup>th</sup>, 2003;
- ii) Mr. Levitt and Mr. Beber and Mr. Weinberg will be cross-examined on September 15<sup>th</sup>, 2003;
- iii) Mr. Goldstein and Mr. Pearlstein will be cross-examined on their affidavits on September 19<sup>th</sup>, 2003;
- iv) The motion is returnable before Justice Nordheimer on October 10<sup>th</sup>, 2003.

### **(iv) Examinations for Discovery**

Examinations for Discovery of the Representative Plaintiffs have been completed, save and except for any examinations arising out of the recent amendments to the Statement of Claim, which by order of Justice Nordheimer must be held on or before September 25, 2003.

Examinations for Discovery of the Defendants have been completed.

The Plaintiffs in the actions where the purchasers are represented by Richard Quance ("the Quance action") should have been examined months ago, but Levitt Beber did not move to schedule the examinations. Now finally, Levitt Beber has scheduled some of these examinations for discovery for August 2003. On June 27, 2003, Justice Nordheimer ordered all actions in the Quance action to be completed by September 30, 2003.

### **(v) Expert Reports**

We have delivered four expert reports. The Defendants have not yet delivered their reports. On June 27, 2003, Justice Nordheimer ordered the Defendants to deliver their reports before the pre-trial of November 24, 2003..

### **3. MEDIATION**

Mediation is a process where the parties come and attend at a mediation. The mediator tries to canvass settlement in an effort to persuade the parties to settle the matter. The mediator, however, has no power to compel a settlement.

If the case settles at mediation, it is concluded. If it does not settle at that time, the litigation continues. Any discussion at the mediation are on a strictly "without prejudice" basis, and cannot be used against either party in the future legal proceeding.

In Class Proceedings, unlike most other Toronto actions, mediation is not mandatory. While the other parties are willing to attend mediation, Levitt Beber is unwilling to agree to schedule a mediation. We are bringing a motion to try to convince a Judge to order the parties to attend a mandatory mediation.

### **4. REQUEST FOR INFORMATION**

Enclosed (by ordinarily mail only) please find a copy of our records identifying the members of the Class proceeding for whom we act, their unit number and the amount of deposit paid.

**IN ORDER TO DISTRIBUTE MONEY RECEIVED BY WAY OF JUDGMENT OR SETTLEMENT IT IS VITAL THAT EACH CLASS MEMBER PROVIDE US WITH THE FOLLOWING INFORMATION IN WRITING:**

1. NAME:
2. CURRENT ADDRESS:
3. PHONE NUMBER(S):
4. EMAIL ADDRESS:
5. UNIT #:
6. AMOUNT OF DEPOSIT :

You can also access information on the file and newsletters by visiting our website at: [www.landymarr.com](http://www.landymarr.com).

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