

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BERNARD K. CHEUNG and BEN WING PUN MOK

PLAINTIFFS

and

(Court seal)

KINGS LAND DEVELOPMENTS INC., HENRY LAM,
LINDA LAM, JEFFREY P. BEBER, LEVITT, BEBER,
EDDIE LEE, RE/MAX T.S. REALTY INC. and LIVING REALTY INC.

DEFENDANTS

PROCEEDINGS COMMENCED UNDER THE CLASS PROCEEDINGS ACT

**FRESH AS AMENDED
STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY

CONTACTING A LOCAL LEGAL AID OFFICE.

Date: July 20th, 2001 Issued by _____
Local registrar

Address of court office:
393 University Avenue
10th Floor
Toronto, Ontario M5G 1E8

TO:
KINGS LAND DEVELOPMENTS INC.

AND TO:
HENRY LAM

AND TO:
LINDA LAM

AND TO:
JEFFREY P. BEBER

AND TO:
LEVITT, BEBER

AND TO:
EDDIE LEE

AND TO:
RE/MAX T.S. REALTY INC.

AND TO:
LIVING REALTY INC.

CLAIM

1. The Plaintiffs claim on behalf of themselves and on behalf of each of the Class Members:

(a) As against the Defendant Kings Land Developments Inc:

- (i) rescission of the Agreements of Purchase and Sale ("the Agreements") made between each member of the Class set out in Schedule A to this Statement of Claim ("the Class"), and Kings Land Developments Inc. as Vendor, of commercial condominium units which were to be constructed at the property legally described as part of Lot 21, Concession 2, East of Yonge Street in the Town of Richmond Hill, in the Regional Municipality of York ("the property");
- (ii) a declaration that the Agreements are null and void;

- (iii) the return of deposits totalling the sum of \$10,894,104.00;
- (iv) all necessary and consequential accounts, directions, references, inquiries for rescission;
- (v) an accounting with respect to the sum of \$10,894,104.00;
- (vi) punitive, exemplary and aggravated damages in the sum of \$10,000,000.00;
- (vii) prejudgment and post-judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.C.43;
- (viii) any goods and services tax which may be payable on any amounts pursuant to Bill C-62, The Excise Tax Act, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada;
- (ix) costs of this action on a solicitor and client basis;
- (x) such further and other relief as counsel may advise and this Honourable Court permit.

(b) As against the Defendants Henry Lam, Linda Lam, Jeffrey P. Beber, Levitt, Beber, and Living Realty Inc.:

- (i) damages in the sum of \$10,894,104.00;
- (ii) an accounting of all monies received from Kings Land Developments Inc., or affiliated corporations or persons;
- (iii) punitive, exemplary and aggravated damages in the sum of \$10,000,000.00;
- (iv) prejudgment and post-judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.C.43;
- (v) any goods and services tax which may be payable on any amounts pursuant to Bill C-62, The Excise Tax Act, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada;
- (vi) costs of this action on a solicitor and client basis;
- (vii) such further and other relief as counsel may advise and this Honourable Court permit;

(c) As against all the Defendants :

- (i) an Order certifying this action as a Class Proceeding and appointing the Plaintiffs as representatives of the Class;

(d) The Plaintiff Bernard K. Cheung claims only against Eddie Lee, and

Re/Max T.S. Realty Inc.

- (i) damages in the sum of \$75,780.00;
- (ii) punitive, exemplary and aggravated damages in the sum of \$100,000.00;
- (iii) prejudgment and post-judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c.C.43;
- (iv) any goods and services tax which may be payable on any amounts pursuant to Bill C-62, the Excise Tax Act, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada;
- (v) costs of this action on a solicitor and client basis;
- (vi) such further and other relief as counsel may advise and this Honourable Court permit.

A. THE PARTIES

2. The Plaintiffs ("the Representative Plaintiffs") reside in the Province of Ontario. The Representative Plaintiffs are representative of a class of persons ("the Class") all of whom claim damages and monies from all the Defendants (except from the Defendants, Eddie Lee and Re/Max T.S. Realty Inc.-only the Plaintiff Bernard K. Cheung claims from Eddie Lee and Re/Max T.S. Realty Inc.). The individuals members of the Class are set forth in Schedule A to the Statement of Claim.

3. The Defendant Kings Land Developments Inc. ("Kings Land") is a company incorporated pursuant to the laws of the Province of Ontario, and carries on business as, inter alia, as a real estate developer. Kings Land as vendor, and each member of the Class as purchaser, entered into the Agreements for the commercial condominium units ("the units") at the property.

4. The Defendants Henry Lam ("Henry") and Linda Lam ("Linda") are individuals who reside in the Province of Ontario and who, at all material times, were the officers, directors and directing minds of Kings Land.

5. The Defendant Levitt, Beber is a law firm ("the law firm"). The Defendant Jeffrey B. Beber ("Beber") is a partner in the law firm. All acts and omissions of Beber as referred to herein were done within the scope of Beber's authority as partner in the law firm, and as such the law firm is liable for the acts and omissions of Beber. The law firm and Beber were at all material times, the solicitors for Kings Land and the recipient and trustee of trust funds paid by the Class as deposits for the purchase of the units at the property.

6. The Defendant Re/Max T.S. Realty Inc. ("Re/Max") is a company incorporated pursuant to the said laws of the Province of Ontario, and licensed as a real estate broker pursuant to the provisions of the Real Estate and Business Brokers Act. The Defendant Eddie Lee ("Lee") is a licensed real estate agent employed by Re/Max. At all material times, Re/Max and Lee were Bernard K. Cheung's agents acting with respect to his

Agreement to purchase units at the property. All acts and omissions of Lee were within the scope of his agency and employment, and as such Re/Max is liable for the acts and omissions of Lee.

7. The Defendant Living Realty Inc. ("Living Realty") is a company incorporated pursuant to the said laws of the Province of Ontario, and licensed as a real estate broker pursuant to the provisions of the Real Estate Business Brokers Act. Living Realty was King Land's listing agent for the property. All acts and omissions of Living Realty's sales representatives and agents were within the scope of their agency and employment, and as such Living Realty is liable for the acts and omissions of their agents and salespersons.

B. THE AGREEMENTS

8. The Representative Plaintiffs and each member of the Class have entered into Agreements with Kings Land to purchase units at the property.

9. Each of the Agreements contains, inter alia, the following provisions:

PURCHASE PRICE

The purchase price (the "Purchase Price") for the unit is Dollars

() Dollars in lawful money of Canada, payable as follows:

(a) 10% of the Purchase Price, by cheque to the Vendor's solicitors in trust herewith as a deposit to be credited on account of the Purchase Price on the Closing Date;

(b) 10% of the Purchase Price, by cheque to the Vendor's solicitors in trust on the date which is 60 days following the date of acceptance hereof by the Vendor as a further deposit to be credited on account of the Purchase Price on the Closing Date. The Purchaser delivers herewith a post-dated cheque payable to the Vendor in the amount set out herein;

(c) 10% of the Purchase Price, by cheque to the Vendor's solicitors in trust on the date which is 90 days following the date of acceptance hereof by the Vendor as a further deposit to be credited on account of the Purchase Price on the Closing Date. The Purchaser delivers herewith a post-dated cheque payable to the Vendor in the amount set out herein;

(d) 20% of the Purchase Price, by cash or certified cheque to the Vendor as a further deposit on the Occupancy Date to be held pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date;

(e) On the Closing Date the Purchaser shall assume or give, at the Vendor's option, a first mortgage (hereinafter called the "Unit Mortgage") to be arranged by the Vendor and secured against the Unit in the principal amount of 50% of the Purchase Price

on the terms and subject to the conditions provided for in Schedule "C" hereto. The net proceeds of any Unit Mortgage will be payable to the Vendor on the Closing Date on account of the Purchase Price. The Purchaser shall have the option not to assume or give the Unit Mortgage by giving written notice to the Vendor sixty (60) days prior to the Closing Date in which event the equivalent amount of the Unit Mortgage shall be paid to the Vendor on the Closing Date;

(f) the balance of the Purchase Price by cash or certified cheque on the Closing Date to the Vendor or as the Vendor may direct, subject to the adjustments and charges hereinafter set forth.

ARTICLE 1 - DEFINITIONS

1.2 "Occupancy Date" shall be the 3rd day of March, 1997, or such extended date as may be established pursuant to Paragraph 3.2 hereof, on which date the Purchaser is required to take possession of the Unit.

1.3 "Closing Date" shall be the later of the Occupancy Date, or that date stipulated by the Vendor and being no later than (60) days after the date of registration of the Declaration.

ARTICLE 2 - TITLE AND FINANCIAL PROVISIONS

2.6 The Purchaser acknowledges that the Vendor's solicitor shall be permitted to release any funds held in trust to the Vendor for all costs associated with the Unit and/or the Building in which the Unit is located. The Vendor's solicitor shall be permitted to rely solely on a direction from the Vendor.

ARTICLE 3 - OBLIGATIONS PRIOR TO OCCUPANCY

3.2 If for any reason except the Vendor's wilful neglect, the completion of the Unit or the common elements is delayed, including without limitation, by reason of fire, strikes, availability of labour, fixtures or building materials, or any other cause whatsoever beyond the Vendor's control, the Vendor, at its option, shall be entitled to extend the Occupancy Date and the Purchaser agrees to grant, and hereby grants, such reasonable extension or extensions of time as may be required by the Vendor for completion of the same, and the Occupancy Date shall be extended from time to time accordingly, provided that such extensions shall not in the aggregate exceed three (3) years from the original Occupancy Date specified in paragraph 1.2 hereof. **If the Vendor does not extend the Occupancy Date or is unable to complete the Unit and establish the Occupancy Date within any**

extended time, the Vendor or Purchaser may terminate this Agreement and the Purchaser shall be entitled to a refund of the deposit money, without interest, subject to any deduction of any extras ordered by the Purchaser, but in no event shall the Vendor or the Agent be liable for any damages or costs whatsoever.
(emphasis added)

10. The Agreements were of a standard form and were drafted by Beber at the request of Henry, Linda and Kings Land.

C. THE LOSS OF THE DEPOSITS

11. Pursuant to the terms of the Agreements, each member of the Class paid deposits in the amounts set forth in Schedule A to this Statement of Claim. The total deposits paid by the Class were \$10,893,204.00 ("the deposits").

12. The deposits were paid to the law firm in trust. Upon receipt of the deposits, the law firm immediately released the deposits to Kings Land.

13. The Representative Plaintiffs do not know what became of the deposits, and demand an accounting from Kings Land and the Lams.

14. A portion of the deposits was paid to the law firm for legal fees in amounts presently unknown to the Representative Plaintiffs.

15. A portion of the deposits was paid to Living Realty for commissions, in amounts presently unknown to the Representative Plaintiffs.

16. A portion of the deposits were used to purchase the property, to pay for marketing and advertising, to pay fees for consultants, planners, lawyers, architects, designers, engineers, and for salaries and other remuneration to Linda and Henry, in amounts presently unknown to the Representative Plaintiffs.

17. None of the deposits were used to pay for construction at the property.

18. None of the deposits were paid for "costs associated with the units purchased by the Class at the property and/or the building" in which the units were located.

D. CLAIMS AGAINST KINGS LAND FOR BREACH OF CONTRACT

19. Kings Land delayed the construction of the property. The property was not ready for occupancy on March 3rd, 1997 ("the Occupancy Date"). The latest possible extension of the occupancy date was March 3rd, 2000. The project has never been completed and will never be completed. Neither the Representative Plaintiffs nor the Class ever received their units or occupancy. Kings Land was unable to complete the transaction.

20. Accordingly, Kings Land has breached and repudiated the Agreements without lawful excuse. Pursuant to the terms of the Agreements, the Representative Plaintiffs and the Class are entitled to the return of the deposits.

21. The deposits have not been returned to the Representative Plaintiffs nor to the members of the Class. Kings Land is legally required to repay the deposits.

E. CLAIMS FOR BREACH OF TRUST

(i) Background Facts to the Breach of Trust Claims

22. The deposits were paid by the Class in the amounts set forth in the Agreements. The deposit cheques were made payable to the law firm in trust.

23. Living Realty took possession of the deposit cheques.

24. Living Realty, Kings Land, Henry, or Linda, or all of these Defendants, or some of these Defendants, delivered the deposits to the law firm.

25. The deposits were placed in the law firm's trust account.

26. Immediately upon receipt of the individual deposits, Beber and the law firm released the deposits at the request of Kings Land, Linda and Henry, or one of them.

(ii) Breach of Trust Claims against the Kings Land, Linda and Henry

27. The following facts are true and relevant in relation to the breach of trust claims against Kings Land, Linda and Henry:

- (a) the deposits should have remained in trust, but have been spent;
- (b) the deposits should only have been spent on construction costs or on costs associated with the units of the Class at the property and/or the building in which the units were located, but were improperly spent for other purposes;

(c) these Defendants deceived the Class into believing that since the deposits being paid to the law firm in trust, the deposits would be safe and remain in

trust until the transactions were completed. The Agreements provided that the deposits were to be paid to the law firm in trust, and further authorized the law firm to immediately release the deposits to Kings Land. The purpose of these provisions in the Agreements was to deceive the Class into believing that their deposits were to be safe and would remain in trust until the transactions were completed. These Defendants knew or ought to have known that unless the specific provisions of the Agreements relating to the deposits were drawn to the attention of the Class, the members of the Class would be deceived into thinking the deposits were safe and would be returned if Kings Land was unable to complete the transaction;

(d) these Defendants spent the deposits when they knew or ought to have known, that the property and the project would not be completed on time, inter alia, because:

(i) Kings Land did not own the property;

(ii) Kings Land had no construction financing, nor adequate funds to complete the project;

(iii) there was community opposition to this project and to a nearby venture (Bayview Landmark), also launched by a company owned by Henry and Linda;

- (iv) Kings Land did not have site plan approval nor did it have a building permit;
- (e) these Defendants diverted deposit monies from Kings Land to themselves for salary and other remuneration;
- (f) Kings Land used deposit monies for non-construction purposes, including to purchase the property, advertising, real estate commissions, legal fees, fees for planners, architects, designers and engineers and salaries and remuneration for Linda and Henry;
- (g) Henry and Linda always intended to use the deposits for the purposes set forth in paragraph 27(f). Previously, including at Bayview Landmark, Henry and Linda has used deposit monies for these purposes;
- (h) Kings Land entered into Agreements of Purchase and Sale without site plan approval or building permits for the project;
- (i) these Defendants did not tell the Class or the Representative Plaintiffs the following:
 - (i) that the deposits would not remain in trust;
 - (ii) that the deposit monies would be spent on non-construction purposes, including to purchase the property and to pay, legal fees, advertising, real estate commissions, fees for planners, architects, designers and engineers;
 - (iii) that Kings Land did not have site plan approval nor did it have a building permit;
 - (iv) that Kings Land did not own the property;
- (j) Kings Land made the false representations in the brochures for the project:
 - (i) that the World Centre would cover "460,000 sq.ft. of retail space", and would "provide boutiques, banks, supermarkets, drug stores, cinemas, as children's fun land, and much more. Over 300 merchants on a single level";
 - (ii) that the World Centre would have a "spectacular two tiered department store occupied by a glamorous world class retailer";
 - (iii) that the World Centre would have a second floor dining court "featuring over 20 patio style restaurants, 1 enclosed seafood establishment, 2 performance courts for special events".

28. Kings Land, Henry and Linda as trustees and fiduciaries are liable to the Representative Plaintiffs, and the Class, on the following grounds:

- (a) breach of trust simpliciter;
- (b) as constructive trustee, for the trust funds and thereafter taking action inconsistent with that obligation;
- (c) by being in knowing receipt of trust funds;
- (d) by knowingly assisting in a dishonest and fraudulent design to deprive the Class of the deposits.

(iii) Breach of Trust Claims against the Beber and the Law Firm

29. The deposits in the law firm trust account were trust funds. Beber and the law firm were trustees of the funds. As trustees they were in a fiduciary relationship with the Class.

30. Prior to releasing the deposits, Beber and the law firm knew or ought to have known of the following:

- (a) the Agreements drafted by Beber and the law firm provided that the deposits were to be paid to the law firm in trust, and further authorized the law firm to immediately release the deposits to Kings Land. The purpose of these provisions in the Agreements was to deceive the Class into believing that their deposits were safe and would remain in trust until the transactions were completed. These Defendants knew or ought to have known that unless the specific provisions of the Agreements relating to the deposits were drawn to the attention of the Class, the members of the Class would be deceived into thinking the deposits were safe and would be returned if Kings Land was unable to complete the transaction;
- (b) that the Class did not understand that the deposits would not remain safe in the law firm's trust account;
- (c) that no one was going to explain to the Class that the deposits would not remain in trust;
- (d) that there was community opposition to the project at the property, and to the nearby venture of Linda and Henry (Bayview Landmark);
- (e) that Kings Land did not own the property;
- (f) that Kings Land had no construction financing, nor adequate funds to complete the project;
- (g) that Kings Land did not have site plan approval nor a building permit;
- (h) that Kings Land was going to use the deposits for:
 - (i) legal fees;
 - (ii) marketing and advertising;
 - (iii) real estate commissions;

- (iv) fees for planners, architects, designers engineers and consultants;
- (v) salaries and other remuneration for Linda and Henry.
- (i) that on previous projects, including Bayview Landmark, Linda and Henry used purchasers' deposits for the purposes set forth in paragraph 30(h);
- (j) that the project at the property was unlikely to be built.
- (k) that Linda and Henry always intended to use the deposits of the class for the purposes set forth in paragraph 30(h).

31. Prior to releasing the deposits, Beber and the law firm did not supervise the expenditure of the deposits. Beber and the law firm as trustees knew or ought to have known that the deposits would be improperly spent. Beber and the law firm had a duty to supervise and ensure that the deposits were used only for construction purposes, and only for the costs associated with the units and the Building at the property. Beber and the law firm advised Linda, Henry and Kings Land that it was proper for them to use the deposits for the purposes set forth in paragraph 30(h) above. As a consequence of the facts set forth in paragraphs 30 and 31, Beber and the law firm had a duty as trustees not to release the deposits from their trust account.

32. Beber and the law firm as trustees and fiduciaries, are liable to the Representative Plaintiffs and the Class on the following grounds:

- (a) breach of trust simpliciter;
- (b) as a constructive trustee for the trust funds and thereafter taking action inconsistent with that obligation;
- (c) by being in knowing receipt of trust funds;
- (d) by knowingly assisting in a dishonest and fraudulent design to deprive the Class of the deposits.

(iv) Breach of Trust Claims against Living Realty

33. Prior to meeting with the members of the Class, and prior to the execution of the Agreements, and prior to releasing the deposit cheques, Living Realty knew the following:

- (a) the Agreements provided that the deposits are paid to the firm in trust, and further authorize the law firm to immediately release the deposits to Kings Land. The purpose of this provision in the Agreement was to deceive the Class into believing that their deposits were safe and would remain in trust until the transactions were completed Living Realty knew or ought to have known that unless the specific provisions of the Agreements relating to the deposits were drawn to the attention of the Class, the members of the Class would be deceived

into thinking the deposits were safe and would be returned if Kings Land was unable to complete the transaction;

(b) that the Class did not understand that the deposits would not remain safe in the lawyers trust account;

(c) that no one, was going to explain to the Class that the deposits would not remain in trust;

(d) that there was community opposition to the project at the property, and to the nearby venture of Linda and Henry (Bayview Landmark);

(e) that Kings Land did not own the property;

(f) that Kings Land had no construction financing, nor adequate funds to complete the project;

(g) that Kings Land did not have site plan approval nor a building permit;

(h) that Kings Land was going to use the deposits for:

(i) legal fees;

(ii) marketing and advertising;

(iii) real estate commissions;

(iv) fees for planners, architects, designers engineers and consultants;

(v) salaries and other remuneration for Linda Lam and Henry Lam.

(i) that on previous projects, including Bayview Landmark, Linda and Henry used purchasers' deposits for the purposes set forth in paragraph 33(h);

(j) that the project at the property was unlikely to be built.

34. Living Realty is liable to the Representative Plaintiffs and the Class on the following basis:

(a) as constructive trustee for the trust funds, and thereafter taking action inconsistent with that obligation;

(b) by knowingly assisting in a dishonest and fraudulent design to deprive the Class of the deposits.

F. CLAIMS FOR NEGLIGENCE

(i) As against Kings Land, Linda and Henry

35. Kings Land, Linda and Henry owed a duty of care to the Class arising out of their special relationship. These Defendants knew the Class members were new immigrants to Canada or foreign residents, unfamiliar with Canadian law or commercial real estate, or Canadian business practice. These Defendants knew the Class would rely upon these

Defendants to honestly disclose all material facts relating to the property, and the material facts relating to the project for the property. These Defendants knew the Class members were relying upon these Defendants to provide full and accurate disclosure of all relevant facts relating to the Class members potential investment in the property.

36. Kings Land, Linda and Henry owed each member of the Class the following duties of care:

- (a) a duty not to enter into Agreements of Purchase and Sale unless they were in a position to complete the transaction;
- (b) a duty to fully and accurately disclose (and not misstate) all material facts relating to the project at the property, before any of the Agreements were signed by members of the Class;
- (c) a duty to ensure that each member of the Class understood the terms of the Agreements and in particular that the terms of the Agreements relating to the deposits.

37. All Class members received the same brochure, which was prepared by the Defendants Kings Land, Linda and Henry and their agents, including Living Realty. In negligent breach of the duties owed by the Defendants Kings Land, Henry and Linda to the Class, the brochure contained the following false representations:

- (a) that the World Centre would cover "460,000 sq.ft. of retail space", and would "provide boutiques, banks, supermarkets, drug stores, cinemas, as children's fun land, and much more. Over 300 merchants on a single level";
- (b) that the World Centre would have a "spectacular two tiered department store occupied by a glamorous world class retailer";
- (c) that the World Centre would have a second floor dining court "featuring over 20 patio style restaurants, 1 enclosed seafood establishment, 2 performance courts for special events".

38. In breach of the duties owed by Kings Land, Henry and Linda to the Class, these Defendants negligently did not disclose to members of the Class the following:

- (a) that the deposits would not remain in trust;
- (b) that the deposit monies would be spent on non-construction purposes, including to purchase the property, legal fees, advertising, real estate commissions, and fees for planners, architects, designers and engineers, and salaries and other remuneration for Linda and Henry;
- (c) that Kings Land did not have site plan approval nor a building permit;
- (d) that Kings Land did not own the property;
- (e) that there was community opposition to the project at the property and to

similar nearby venture of Linda and Henry (Bayview Landmark);

(f) that the project was unlikely to be built;

(g) that Kings Land had no construction financing, nor adequate funds to complete the project;

(h) that the Agreements provided that the deposits were to be paid to the law firm in trust, and further authorized the law firm to immediately release the deposits to Kings Land. The purpose of this provision in the Agreement was to deceive the Class into believing that their deposits were safe and would remain in trust until the transactions were completed. These Defendants knew or ought to have known that unless the specific provisions of the Agreements relating to the deposits were drawn to the attention of the Class, the members of the Class would be deceived into thinking the deposits were safe and would be returned if Kings Land was unable to complete the transaction.

39. With the knowledge and consent of Kings Land, Henry and Linda, the agents at Living Realty negligently told the members of the Class that the deposits were safe and would remain in the trust account of the Law firm until the completion of the transaction, and Living Realty negligently placed advertisements in local Chinese newspapers which falsely misrepresented the state of development of the World Centre project;

40. The members of the class in reaching the decision to enter into the Agreements reasonably relied upon the misrepresentations of Kings Land, Linda and Henry, and upon the failure of these Defendants to disclose relevant information. As a consequence, the members of the Class have lost the deposits.

(ii) As against Living Realty

41. Living Realty owed a duty of care to the Class arising out of its special relationship. Living Realty knew the Class members were new immigrants to Canada or foreign residents, unfamiliar with Canadian law or commercial real estate, or Canadian business practice. Living Realty knew the Class would rely upon this Defendant and its agents and sales representatives to honestly disclose all material facts relating to the property, and the material facts relating to the project for the property. Living Realty knew the Class members were relying upon Living Realty to provide full and accurate disclosure of all relevant facts relating to the Class members' potential investment in the property.

42. Living Realty owed each member of the class the following duties of care:

(a) a duty not to allow the Class to enter into the Agreements for the property, unless they had made enquires and reasonably satisfied themselves that Kings Land could and would complete the transaction;

(b) a duty to fully and accurately disclose (and not misstate) all material facts relating to the project at the property, before any of the Agreements were signed by members of the Class;

(c) a duty to ensure that each member of the Class understood the terms of the

Agreements and in particular that the terms of the Agreements relating to the deposits.

43. All Class members received the same brochure, which was prepared by the Defendants Kings Land, Linda and Henry and their agents, including Living Realty. In negligent breach of the duties owed by Living Realty, the brochure contained the following false representations:

(a) that the World Centre would cover "460,000 sq.ft. of retail space", and would "provide boutiques, banks, supermarkets, drug stores, cinemas, as children's fun land, and much more. Over 300 merchants on a single level";

(b) that the World Centre would have a "spectacular two tiered department store occupied by a glamorous world class retailer";

(c) that the World Centre would have a second floor dining court "featuring over 20 patio style restaurants, 1 enclosed seafood establishment, 2 performance courts for special events".

44. In breach of the duties owed by Living Realty to the Class, Living Realty negligently failed to disclose to the Class the following:

(a) that the deposits would not remain in trust;

(b) that the deposit monies would be spent on non-construction purposes, including to purchase the property, pay for legal fees, advertising, real estate commissions, and fees for planners, architects, designers and engineers, and salaries and other remuneration for Linda and Henry;

(c) that Kings Land did not have site plan approval nor did it have a building permit;

(d) that Kings Land did not own the property;

(e) that there was community opposition to the project at the property and to similar nearby venture of Linda and Henry (Bayview Landmark);

(f) that the project was unlikely to be built;

(g) that Kings Land had no construction financing, nor did it have adequate funds to complete the project;

(h) that the terms of the Agreements provided that the deposits were to be paid to the law firm in trust, and further authorized the law firm to immediately release the deposits to Kings Land. The purpose of these provisions in the Agreement was to deceive the Class into believing that their deposits were safe and would remain in trust until the transactions were completed (these material facts were not disclosed to the Class).

45. Agents at Living Realty negligently told, or alternatively impliedly represented by

their silence, that the Class deposits were safe and would remain in the trust account of the law firm until the completion of the transaction, and Living Realty negligently placed advertisements in local Chinese newspapers, which falsely misrepresented the state of development of the World Centre project.

46. The members of the class reasonably relied upon the misrepresentations of Living Realty, and upon the failure of Living Realty to disclose relevant information prior to reaching the decision to enter into the Agreements. As a consequence the members of the Class have lost the deposits.

(ii) As against the Law Firm and Beber

47. Beber and the law firm owed a duty of care to the Class arising out of their special relationship as trustees with respect to the deposits.

48. Prior to releasing the deposits, Beber and the law firm made no inquiries as to what precisely deposits would be expended upon. As trustees, Beber and the law firm had a duty of care, which required that before releasing the deposits, they had to enquire as to what purpose the deposits were to be used, and to ensure they were to be used only for

construction purposes, and only for the costs associated with the units and the Building at the property, and only for purposes permitted under the Agreements.

49. The law firm and Beber, as trustees, negligently released the deposit monies to Kings Land. The particulars of the negligence include, but are not limited to, the following:

- (a) they released the deposit monies to Kings Land without a valid Direction;
- (b) they released the deposit monies without notifying the Class that the intended use of the deposit monies was not in accordance with the terms of the Agreements, not for construction, and not for the costs associated with the units and/or the Building at the property in which the unit is located;
- (c) they failed to monitor and supervise and make reasonable inquiries as to the use of the deposit monies;
- (d) they knowingly released the deposit monies when they knew or ought to have known of the facts set forth in paragraph 30 and 31 of the Statement of Claim;
- (e) they advised Linda, Henry and Kings Land that it was proper to use the deposit for the purposes set forth in paragraph 30 (h) above.

50. The members of the Class reasonably relied upon the law firm and Beber properly performing their duties as trustees both prior to Class members reaching their decision to enter into the Agreements, and subsequently after the execution of the Agreements. As a consequence of the negligence of Beber and the law firm, the Class has lost the deposits.

G. FRAUD, DECEIT AND PIERCING THE CORPORATE VEIL

51. The misrepresentations and non-disclosure of material facts, and breach of trust, as particularized in paragraphs 27, 28 37 and 38 above, constitute fraud and deceit and as

such is a further basis for liability of Kings Land, Henry and Linda to the Class. These defendants are liable as they made a false representations or statements, which they knew were false, and which were intended to deceive the Class, and which materially induced the Class to enter the Agreements, resulting in the loss of the deposits. Further these Defendants are liable because they acted dishonestly to deprive the Class of the deposits. The actions of these Defendants are separate tortuous conduct justifying piecing the corporate and veil and awarding a judgment against Linda and Henry for the quantum of the deposits.

H. PUNITIVE AGGRAVATED AND EXEMPLARY DAMAGES

52. The conduct of Kings Land, Henry, Linda, Living Realty, Beber and the Law firm is such as to justify an award of punitive, exemplary and aggravated damages.

I. OTHER MATTERS

53. The Representative Plaintiffs and the Class rely upon the legal doctrine of contra proferentem with respect to the interpretation of the Agreements.

J. CLAIMS OF BERNARD K. CHEUNG AGAINST LEE AND RE/MAX

54. Lee and Re/max owed a duty of care to Bernard K. Cheung ("Cheung") arising These Defendants knew Cheung would rely upon Lee and Re/Max to honestly disclose all material facts relating to the property, and the material facts relating to the project for the property. Lee and Re/Max knew Cheung was relying upon these Defendants to provide full and accurate disclosure of all relevant facts relating to Cheung's potential investment in the property.

55. Lee and Re/Max owed Cheung the following duties of care:

- (a) a duty not to allow Cheung to enter into and Agreement for the property unless they had made enquires and reasonably satisfied themselves that Kings Land could and would complete the transaction;
- (b) a duty to fully and accurately disclose (and not misstate) all material facts relating to the project at the property, before any of the Agreement was signed by Cheung;
- (c) a duty to ensure that Cheung understood the terms of the Agreement and in particular that the terms of the Agreement relating to the deposits.

56. In breach of the duties owed by Lee and Re/Max, these Defendants negligently did not disclose to Cheung the following:

- (a) that the deposits would not remain in trust;
- (b) that the deposit monies would be spent on non-construction purposes, including to purchase the property, legal fees, advertising, real estate commissions, and fees for planners, architects, designers and engineers, and salaries and other remuneration for Linda and Henry;
- (c) that Kings Land did not have site plan approval nor a building permit;

- (d) that Kings Land did not own the property;
- (e) that there was community opposition to the project at the property and to similar nearby venture of Linda and Henry (Bayview Landmark)
- (f) that the project was unlikely to be built;
- (g) that Kings Land had no construction financing, nor adequate funds to complete the project;
- (h) that the terms of the Agreements provided that the deposits were to be paid to the law firm in trust, and further authorized the law firm to immediately release the deposits to Kings Land.

57. Lee negligently told Cheung, or alternatively impliedly represented by his silence that the deposits were safe and would remain in the trust account of the Law firm until the completion of the transaction.

58. Cheung reasonably relied upon the misrepresentations of Lee and Re/Max, and the failure of these Defendants to disclose relevant information in reaching the decision to enter into the Agreement. As a consequence Cheung has lost his deposit.

The Plaintiffs propose that this action be tried at Toronto.

Date of issue: August , 2001 LANDY, MARR & ASSOCIATES
Barristers and Solicitors
Suite 900
2 Sheppard Avenue East
Toronto, Ontario
M2N 5Y7

Keith M. Landy
Samuel S. Marr
(416) 221-9343
Fax: (416) 221-8948