

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE PERELL

)
)
)

Monday, the 26th day
of March, 2012



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ANDREW SORENSEN

Plaintiff

- and -

EASYHOME LTD., DAVID INGRAM, STEVE GOERTZ, CHRIS FREGREN, ~~DOUGLAS ANDERSON, DONALD K. JOHNSON, RONALD G. GAGE, ROBERT W. KORTHALS,~~ NANCIE LATAILLE, DAVID LEWIS and JOSEPH ROTUNDA ✓ JRP.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION made by the Plaintiffs was for an order certifying the action as a class proceeding.

ON CONSENT of the counsel for the Plaintiff and for the Defendants:

1. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions apply:

- i. "EH" means easyhome Inc.;
 - ii. "Class Period" means the period from means the period from April 8, 2008 to October 14, 2010;
 - iii. "Defendants" means EH and the Individual Defendants;
 - iv. "Excluded Persons" means the past or present subsidiaries, officers, directors, partners, affiliates, legal representatives, heirs, predecessors, successors and assigns of EH, a predecessor of EH, and all family members of the current or former officers and directors of EH and any entity in which any Defendant has or had a controlling interest;
 - v. "Individual Defendants" means the defendants David Ingram, Steve Goertz and Chris Fregren;
 - vi. "OSA Order" means the Order issued on the concurrent motion of the Plaintiff for leave to commence an action against the Defendants and Frank Larson and Gary Cooley under Part XXIII.1 of the *Securities Act*; and
 - vii. "Securities Act" means the *Securities Act*, R.S.O. 1990, c. S.5.
2. **THIS COURT ORDERS** that the action, as amended by the OSA Order, is hereby certified as a class proceeding pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
3. **THIS COURT ORDERS** that the Class be defined as:
- all persons, other than Excluded Persons, who acquired the securities of easyhome Ltd. during the Class Period.
4. **THIS COURT ORDERS** that the Plaintiff Andrew Sorensen is appointed as the representative plaintiff for the Class.
5. **THIS COURT DECLARES** that the causes of action asserted on behalf of the Class are:
- i. On behalf of Class Members who acquired EH securities in the secondary market, statutory claims for misrepresentation in secondary market disclosure documents

pursuant to s.138.3 of the *Securities Act* and the analogous provisions of the securities legislation of each other Canadian jurisdiction.

6. **THIS COURT DECLARES** that the common issues are:

[1] Did some or all of the following disclosure documents of easyhome Ltd. contain a misrepresentation?

- a. Management's Discussion and Analysis and Audited Annual Financial Statements
the fiscal year ended December 31, 2007;
- b. Management's Discussion and Analysis and Interim Financial Statements, for the
3 months ended March 31, 2008;
- c. Management's Discussion and Analysis and Interim Financial Statements, for the
3 and 6 months ended June 30, 2008;
- d. Management's Discussion and Analysis and Interim Financial Statements, for the
3 and 9 months ended September 30, 2008;
- e. Management's Discussion and Analysis and Audited Annual Financial Statements
for the fiscal year ended December 31, 2008;
- f. Management's Discussion and Analysis and Interim Financial Statements, for the
3 months ended March 31, 2009;
- g. Management's Discussion and Analysis and Interim Financial Statements, for the
3 and 6 months ended June 30, 2009;
- h. Management's Discussion and Analysis and Interim Financial Statements, for the
3 and 9 months ended September 30, 2009;

- i. Management's Discussion and Analysis and Audited Annual Financial Statements, for the fiscal year ended December 31, 2009;
- j. Management's Discussion and Analysis and Interim Financial Statements, for the 3 months ended March 31, 2010; and
- k. Management's Discussion and Analysis and Interim Financial Statements, for the 3 and 6 months ended June 30, 2010.

[2] If the answer to [1] is yes, are any of the Defendants liable to any Class Members pursuant to Section 138.3 of the *Securities Act* or the analogous provisions of the securities legislation of the other Canadian jurisdictions?

[3] If the answer to [2] is yes, what damages are payable by each such Defendant in respect of that liability pursuant to s 138.5 of the *Securities Act*?

[4] Should the Defendants pay the cost of administering and distributing the recovery? If so, which Defendants should pay, and how much?

- 7. **THIS COURT ORDERS** that the Plaintiff's Litigation Plan is approved in the form attached hereto as Schedule A.
- 8. **THIS COURT ORDERS** that Class Members may only opt-out of the Class in accordance with the directions and prior to the date specified in the notice of certification to be approved by this Court

9. **THIS COURT ORDERS** that no other proceeding relating to the subject matter of this action may be commenced without leave of the Honourable Justice Perell obtained on notice to the parties hereto.

10. **THIS COURT ORDERS** that no costs are payable with respect to this motion.

Perell J

THE HONOURABLE JUSTICE PERELL

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY - 3 2012

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

[Signature]

SCHEDULE "A"

ANDREW SORENSEN

V.

EASYHOME LTD., DAVID INGRAM, STEVE GOERTZ and CHRIS FREGREN

PLAINTIFF'S AMENDED LITIGATION PLAN

AS OF MARCH 19, 2012

DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan ("Plan") have the meanings as particularized in the statement of claim.

CLASS COUNSEL

2. The Plaintiff has retained Siskinds LLP ("Class Counsel") to prosecute this class action. Class Counsel has the requisite knowledge, skill, experience, and resources to prosecute the action to resolution.

THE COMPOSITION OF THE CLASS

3. The Plaintiff seeks to represent the Class, consisting of:

all persons, other than Excluded Persons, who acquired securities of easyhome Ltd. during the period of April 8, 2008 to October 15, 2010 (the "Class Period"), or such other definition as may be approved by the Court.

4. "Excluded Persons" means:

The past or present subsidiaries, officers, directors, partners, affiliates, legal representatives, heirs, predecessors, successors and assigns of EH, a predecessor of EH, and all family members of Ingram, Goertz, Fregren, Anderson, Johnson, Gage, Korthals, Lataille, Lewis, Rotunda, Bowland, Gates, Voorheis and Appel, and any entity in which any of Defendant has or had a controlling interest.

REPORTING AND COMMUNICATION

5. Class Counsel has posted information about the nature and status of this action on their website at:

<http://www.classaction.ca/classaction-ca/masterpage/actions/Securities/Current-Actions/EasyHome.aspx> (the “Website”).

That information will be updated regularly. Copies of important, publicly available court documents, court decisions, notices, documentation and other information relating to the action are or will be accessible from the Website.

6. The Website also:
 - (a) contains a communication webpage, a feature that permits putative Class Members to submit inquiries to Class Counsel which are sent directly to a designated member of the Class Counsel team, who will promptly respond; and
 - (b) lists a toll-free telephone direct dial number for a designated person with Class Counsel, permitting putative Class Members to make inquiries to a live person.

DOCUMENT MANAGEMENT

7. Class Counsel will use data management systems to organize, code and manage the documents produced by the Defendants and all relevant documents in the Plaintiff’s possession. The agreement of Defendants’ counsel will be sought to facilitate electronic exchange of documents.

LITIGATION SCHEDULE

8. The Plaintiff has brought a motion seeking leave to amend the statement of claim to assert the cause of action available under Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (“OSA”).

9. The Plaintiff intends to request that the class action case management judge schedule that motion on the same day(s) as the certification motion.
10. In the event that the motion for leave to commence a proceeding under Part XXIII.1 of the *OSA* is disposed of prior to the motion for certification, the Plaintiff may ask the court to order the Defendants to deliver their statements of defence before the hearing of the certification motion.
11. After disposition of the motion seeking leave pursuant to the *OSA* and the certification motion, absent agreement among counsel, the Plaintiff will ask the court to set a litigation schedule for the remaining steps in the action. The Plaintiff may ask from time to time that the litigation schedule be amended.

SECTIONS 138.8(4), 138.8(5) AND 138.9 OF THE *OSA*

12. Pursuant to s. 138.8(4) of the *OSA*, the Plaintiffs are providing to the OSC a copy of their motion record in support of their motion for leave under Part XXIII.1, and will provide to the OSC a copy of their factum in support of such motion promptly following the service of such factum upon the Defendants' counsel.
13. Promptly following the scheduling of the hearing of the Plaintiffs' motion for leave under Part XXIII.1, the Plaintiffs will provide the OSC with notice in writing of the date on which the motion for leave is scheduled to proceed, in accordance with s. 138.8(5) of the *OSA*.
14. In the event that leave is granted by the court under Part XXIII.1, then, pursuant to s. 138.9 of the *OSA*, the Plaintiff will:

- (a) promptly issue a news release disclosing that leave has been granted to commence an action under Part XXIII.1;
 - (b) send a written notice to the OSC within seven days, together with a copy of the news release;
 - (c) send a copy of the Proposed Claim, as filed, to the OSC; and
 - (d) provide the OSC with notice in writing of the date on which the trial of the action is scheduled to proceed, at the same time such notice is given to each defendant.
15. Prior to the issuance of the notice referred to in paragraph 14(a) above, the Plaintiff will bring a motion for an order approving the form, content and manner of distribution of the s. 138.9 notice. If the Defendants are not required to pay the costs of notice, or the Plaintiff does not so request, then the Plaintiff will issue that notice at its own expense, reserving its right to seek recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.

NOTICE OF CERTIFICATION OF THE ACTION AS A CLASS PROCEEDING AND THE OPT-OUT PROCEDURE

16. If the action is certified as a class proceeding, the Plaintiff proposes that a notice advising of the certification be circulated to advise Class Members, among other things, that:
- (a) the court certified the action as a class proceeding;
 - (b) a person may only opt out of the class proceeding by sending a written election to opt out to the recipient designated by the court before a date fixed by the court;
 - (c) a person may not opt out of the class proceeding after the date fixed by the court;
- and

- (d) if the common issues are resolved in favour of the Class Members, claimants may be required to register, file a claim and submit documentation to a designated person in order to be entitled to any compensation.
17. The notice advising of certification, in a form approved by the court, will be distributed and published in the following manner:
- (a) posted by Class Counsel on the Website;
 - (b) provided by Class Counsel to any person who requests it;
 - (c) published once in the national edition of *The Globe and Mail*, Report on Business section;
 - (d) published once in the national edition of the *National Post*, Financial Post section;
 - (e) made available orally by recorded message at Class Counsel's toll-free line;
 - (f) sent electronically by Class Counsel to the list of brokers in Canada attached as Schedule 1 asking them to bring the Notice to the attention of their clients who acquired EH's securities during the Class Period;
 - (g) placed online at the websites listed on Schedule 2; and
 - (j) posted by EH in a prominent location on its website at <http://www.easyhome.ca>.
18. The Plaintiff may ask the court to order that the Defendants pay the costs of disseminating the notice in the above manner. Alternatively, the Plaintiff will pay the

costs in the first instance, reserving its right to seek recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.

DISCOVERY

19. No later than 60 days following the close of pleadings, the parties will agree to a discovery plan meeting the requirements of Rule 29.1.03 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and thereafter will update the plan in accordance with Rule 29.1.04 thereof.

REFINEMENT OF COMMON ISSUES

20. Following the filing of statements of defence and the completion of discovery, the parties may seek an amendment of the order certifying this proceeding to deal with any necessary refinement to the common issues arising from those processes.

TRIAL OF THE COMMON ISSUES

21. The Plaintiff will ask the court to hold the trial of the common issues six (6) months after the completion of the examinations for discovery and the production of the information required by the undertakings and any motions.

NOTICE OF THE RESOLUTION OF THE COMMON ISSUES

22. Following the trial of the common issues, the Court will be asked to:
 - (a) settle the form and content of the notice of resolution of the common issues;
 - (b) order that the notice of the resolution of the common issues be distributed to those Class Members who did not validly opt out;
 - (c) prescribe the information required from Class Members in order to make a claim under Part XXIII.1 of the *OSA*;

- (d) prescribe the information and procedure required in order for Class Members to make a claim at common law; and
 - (e) set a date by which each Class Member will be required to file a claim, if necessary.
23. If the common issues, or some of them, are resolved in favour of the Plaintiff, the Plaintiff will propose that the notice of resolution of the common issues advise Class Members, among other things:
- (a) that the Plaintiff was successful on the common issues, or some of them;
 - (b) that no Class Member will be entitled to any compensation unless a claim is filed in a prescribed manner by a fixed date;
 - (c) of the procedure to file a claim;
 - (d) that damages for each Class Member under Part XXIII.1 of the *OSA* will be calculated based, at least in part, on her/his/its trading particulars;
 - (e) that each Class Member will have the opportunity to review and, if necessary, provide information to correct the calculation of his/her/its damages under Part XXIII.1 of the *OSA* by accessing personal transaction particulars through the secure portion of the Website;
 - (f) that each Class Member will have the opportunity to come forward and establish his/her/its damages by proving any facts, other than his/her/its trading particulars, as may be prescribed by the court; and

(g) that their rights against the Defendants in relation to the Representation will be deemed to have been finally adjudicated whether they submit a claim or not.

24. The Plaintiff will ask the court to order that the notice of resolution of the common issues be distributed substantially in accordance with the procedure set out in paragraph 17 above. This notice, to the extent possible, should be sent directly to each Class Member.

CLAIMS PROCESS

25. The Plaintiff will ask the court to appoint an Administrator, with such rights, powers and duties as the court directs, to receive and evaluate claims in accordance with the protocols approved by the court pursuant to s. 25 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (“CPA”).

26. The Plaintiff will ask the court to appoint one or more Referees with such rights, powers and duties as the court directs to conduct references in accordance with protocols approved by the court.

27. In order to simplify the claims process, the Administrator will, wherever practical, utilize:

- (a) a paperless, electronic state-of-the-art web-based technology system which will include a secure database that is incorporated into the Website (“Database”);
- (b) standardized claims forms and filing procedures; and
- (c) summary methods of introducing documentary evidence.

28. The court will be asked to set a deadline (“Claims Deadline”) by which Class Members must file their claims with the Administrator.

29. Any person who does not file a claim with the Administrator before the Claims Deadline will not be eligible to participate in the damages assessment procedure and will not be entitled to recover any damages without leave of the court.
30. In order to file a claim, a person must, on or before the Claims Deadline:
 - (a) register on the Database, or by mail or by fax, with the Administrator; and
 - (b) submit such documentation to the Administrator as required by the court in support of the claim.
31. The types of records which shall constitute sufficient proof of a claim shall be specified in a protocol to be approved by the court and may include trading account statements, trade confirmation slips or other evidence confirming acquisition of the EH securities, and, if applicable, evidence confirming disposition of the EH securities.
32. The name, address and amount claimed by each person who files a claim with the Administrator before the Claims Deadline shall be added to the Database and provided with a user name and a password by the Administrator to permit the person access to her/his/its claims information in the Database.
33. If any claimant disagrees with the Administrator's decision relating to eligibility or calculation of damages, she/he/it may elect to have the Administrator's decision reviewed by the Referee within a time period fixed by the court. The Referee will carry out the review of the Administrator's decision in the least expensive, most summary manner possible in accordance with a protocol to be approved by the court. The Referee's decisions will be final. There shall be no right of appeal from the Referee's decision.

DAMAGES GENERALLY

34. Each Class Member may be entitled to:
- (a) damages assessed in accordance with the assessment formula provided in s. 138.5 of the *OSA*, or a pro rated amount in respect thereof; plus
 - (b) prejudgment interest; plus
 - (c) postjudgment interest.

STATUTORY DAMAGES UNDER PART XXIII.1 OF THE *OSA*

35. Part XXIII.1 of the *OSA* provides specific directions for the calculation of damages payable under those provisions. The Plaintiff will ask the court at the common issues trial to determine the formula by which the damages of Class Members are to be calculated.
36. The Administrator will review the share purchase and sale data of each Class Member who makes a claim, and calculate damages under Part XXIII.1 of the *OSA* pursuant to the formulae ordered by the court in the judgment on the common issues.
37. In respect of each claimant who files a claim before the Claims Deadline, the Administrator shall make a decision, and promptly notify the claimant of the following:
- (a) whether the person is an eligible claimant; and
 - (b) the amount of the person's damages calculated pursuant to Part XXIII.1 of the *OSA*.

38. The Administrator shall post its conclusions on the Database and/or communicate them electronically or in writing by mail or by fax to the persons affected in accordance with a protocol to be approved by the court.
39. Each claimant will be able to access the Administrator's decision and damage calculations by going to the Database and inputting a user name and password. The Defendants determined by the court to be liable shall also have access to the Database.
40. After a claimant has reviewed damage calculations in the Database, the claimant, or the Defendants determined by the court to be liable, can advise the Administrator, within a time period fixed by the court, of any disagreement they may have with the information and/or calculations.
41. After being advised of a disagreement by the Class Member within the period fixed by the court, the Administrator shall consider any information provided by the claimant and/or the Defendants and provide its decision on eligibility and/or the damages calculation.

THE ADMINISTRATOR'S FIRST REPORT TO COURT

42. Once the Referee(s) has conducted all of the proceedings described above, the Administrator will present the findings to the court in the Administrator's First Report to the court.
43. The court will be asked:
 - (a) to review the Administrator's First Report to the court and enter judgment in accordance with it;

- (b) decide whether or not to authorize the Administrator to make a distribution to the eligible Class Members; and
 - (c) discharge the Referee(s) from his or her mandate.
44. If the total available for distribution to Class Members is not fully disbursed to the Class Members within a period of time fixed by the court, the unpaid amount shall be distributed by the Administrator to designated recipients cy près in such manner and on such terms as the court may direct.

ADMINISTRATOR'S FINAL REPORT TO COURT

45. After the Administrator makes its final distribution, it shall report to the court and be discharged as the Administrator.

ORDERS RELATING TO CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION

46. After the trial of the common issues, the Plaintiff will ask the court to approve an agreement respecting fees and disbursements with Class Counsel. To the extent that the approved Class Counsel's fees, disbursements and GST are not completely paid by the costs recovered from the Defendants, the unpaid balance shall be a first charge on the total recovery and paid before any distribution to the Class Members.
47. The Plaintiff will ask the court to order that the Defendants pay all administration costs, including the costs of all notices associated with the process and the fees and disbursements of the Administrator and Referee as these costs are incurred. Absent that court order, the Plaintiff will seek an order that these costs be paid out of the total recovery after payment of Class Counsel's fees and disbursements but before any distribution to the Class Members.

FURTHER ORDERS CONCERNING THIS PLAN

48. This Plan may be amended from time-to-time by directions given at case conferences or by further order of the court.

EFFECT OF THIS PLAN

49. This Plan shall be binding on all Class Members who do not opt out in accordance with the procedure directed by the court whether or not they make a claim under the Plan.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(Certification)**

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Michael G. Robb (LSUC #: 45787G)
Daniel E. H. Bach (LSUC #: 52087E)
Tel: 519.660.2121
Fax: 519.660.6065

Lawyers for the Plaintiff