



SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

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FAX COVER SHEET

Date: March 27, 2012

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FROM:

Laurie Pietras, Acting Secretary to The Honourable Mr. Justice Perell

TOTAL PAGES (INCLUDING COVER PAGE): 6

MESSAGE:

RE: Sorenson v. easyhome Ltd. et al
Court file no. 10-CV-412963CP & 11-CV-424064CP

Please see attached Reasons for Decision from Justice Perell released today.

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CITATION: Sorenson v. easyhome Ltd. 2012 ONSC 1946
COURT FILE NO.: 10-CV-412963CP
COURT FILE NO.: 11-CV-424064CP
DATE: March 27, 2012

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Andrew Sorenson

Plaintiff

- and -

easyhome Ltd., David Ingram, Steve Goertz, Chris Fregren

Defendants

Proceedings under the *Class Proceedings Act, 1992*

AND BETWEEN:

Andrew Sorenson

Plaintiff

- and -

Douglas Anderson, Donald K. Johnson, Ronald G. Gage, Robert W. Korthals, Nancie
Lataille, David Lewis, and Joseph Rotunda

Defendants

Proceedings under the *Class Proceedings Act, 1992*

COUNSEL:

- Daniel Bach for the Plaintiff
- Nadia Campion for the Defendants

HEARING DATE: March 26, 2012

PERELL, J.

REASONS FOR DECISION

[1] This is a consent motion for: (a) certification of this action as a class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; (b) leave to advance a claim against the Defendants, easyhome Ltd., David Ingram, Steve Goertz, and Chris Fregren pursuant to Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5; and (c) dismissal of a parallel action as against the Defendants Douglas Anderson, Donald K.

Johnson, Ronald G. Gage, Robert W. Korthals, Nancie Lataille, David Lewis, and Joseph Rotunda.

[2] On October 14, 2010, easyhome Ltd., which rents consumer goods, revealed that there had been a material fraud in its related loan business for over 30 months and that as a consequence, it was obliged to restate certain of its financial results.

[3] The Plaintiff, Andrew Sorenson, commenced a proposed class action on behalf of persons who purchased easyhome Ltd. shares during the period April 8, 2008 to October 14, 2010. The action included common law misrepresentation claims, and Mr. Sorenson proposed to bring a secondary market misrepresentation claim under Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5. The action was brought against easyhome Ltd., David Ingram, Steve Goertz, Chris Fregren.

[4] In 2011, Mr. Sorenson commenced a parallel action (11-CV-424064CP) to join additional defendants, who might also be liable under Part XXIII.1 of the Ontario *Securities Act* or for common law negligence. The 2011 action was against Douglas Anderson, Donald K. Johnson, Ronald G. Gage, Robert W. Korthals, Nancie Lataille, David Lewis, and Joseph Rotunda.

[5] Under s. 138.1 of the Ontario *Securities Act*, where certain types of documents contain a misrepresentation, a person or company who acquires or disposes of a corporation's security instrument between the release of the document and the time when the misrepresentation is publicly corrected has a right of action for damages against: (a) "the responsible issuer," (b) each director of the responsible issuer at the time the document was released; and (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document.

[6] The *Securities Act* requires that the Plaintiff seek leave before commencing an action under Part XXIII.1, and in order to obtain leave, the court must be satisfied that (a) the action is being brought in good faith; and (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

[7] In March, 2011, Mr. Sorenson served a motion for certification and for leave under the *Securities Act*.

[8] easyhome Ltd. admits that it released documents containing misrepresentations. Mr. Ingram was CEO and President of easyhome Ltd. at all material times. Mr. Goertz and Mr. Fregren respectively held the positions of Senior Vice President and Chief Financial Officer during the relevant period.

[9] After the motion for leave was served, the parties negotiated an agreement with respect to the prosecution and defence of Mr. Sorenson's actions.

[10] The terms of the procedure agreement were: (a) Mr. Sorenson would withdraw a motion for leave under Part XXII.1 in the parallel action (CV-11-424064-00CP) on a without costs basis; (b) the claims against Douglas Anderson, Donald K. Johnson, Ronald G. Gage, Robert W. Korthals, Nancie Lataille, David Lewis, and Joseph Rotunda would be dismissed; (c) the remaining Defendants would consent to leave for

an action under Part XXIII.1 of the *Securities Act*, and the filing of a Part XXIII.1 claim against easyhome Ltd., David Ingram, Steve Goertz and Chris Fregren; and (d) the Defendants would consent to certification of the Part XXIII.1 claim as a class proceeding.

[11] It was a term of the agreement that the Defendants reserved the right with respect to the limitation period defences, notwithstanding certification of the class period as April 8, 2008 to October 14, 2010.

[12] The motion now before the Court is, in effect, to implement the procedure settlement negotiated by the parties.

[13] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, the court shall certify a proceeding as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims of the class members raise common issues of fact or law; (d) a class proceeding would be the preferable procedure; and (e) there is a representative plaintiff who would adequately represent the interests of the class without conflict of interest and who has produced a workable litigation plan.

[14] Mr. Sorenson's Statement of Claim is on behalf of Class Members who acquired easyhome Ltd. securities in the secondary market. He makes 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. As part of his agreement with the Defendants, Mr. Sorenson has restricted his claims to the Part XXIII.1 claims against certain Defendants.

[15] A secondary market disclosure claim was certified as appropriate for a class action in *Silver v. Imax Corp.*, [2009] O.J. No. 5585 (S.C.J.), leave to appeal to Div. Ct. refused 2011 ONSC 1035 (Div. Ct.) and *Silver v. Imax Corp.*, [2009] O.J. No. 5573 (S.C.J.). See also *Dobbie v. Arctic Glacier Income Fund*, 2011 ONSC 25, leave to appeal to Div. Ct. granted 2012 ONSC.

[16] Mr. Sorenson proposes the following class definition:

All persons, other than past or present subsidiaries, officers, directors, partners, affiliates, legal representatives, heirs, predecessors, successors and assigns of easyhome Ltd., a predecessor of easyhome Ltd. and all family members of the current or former officers and directors of easyhome Ltd. and any entity in which easyhome Ltd. David Ingram, Steve Goertz and Chris Fregren (the Defendants) has or had a controlling interest ("Excluded Persons"), who acquired the securities of easyhome Ltd. from April 8, 2008 to October 14, 2010 ("Class Period").

[17] The proposed common issues are as follows:

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 Question 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 Question 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?

[18] Having read the motion record and having regard to the consent of the parties, I am satisfied that the criteria for certification are satisfied in the case at bar.

[19] I have also satisfied that leave should be granted to Mr. Sorenson to commence an action as proposed under Part XXIII.1 of the *Securities Act*.

[20] Accordingly, the motions should be granted.

[21] Orders accordingly.



Perell, J.

Released: March 27, 2012

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Lewis, and Joseph Rotunda

Defendants

REASONS FOR DECISION

Perell, J.

Released: March 27, 2012.