

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N

CINDY MARIE GALE and PAUL RAE GIBBON

Plaintiffs

and

NORQUAY DEVELOPMENTS LIMITED, COINAMATIC CANADA INC.,
UNION GAS LIMITED and CAROLYN DEDRICK

Defendants

Proceedings under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
(Notice of Action issued June 29, 2011)

1. The following definitions apply for the purposes of this statement of claim:

- (a) **“Building”** means the premises municipally described as 168 Victoria Street South, in Woodstock, Ontario;
- (b) **“Carolyn”** means Carolyn Dedrick;
- (c) **“Cindy”** means Cindy Marie Gale;
- (d) **“CJA”** means the *Courts of Justice Act, R.S.O., 1990 c.C.43*, as amended;
- (e) **“Class”** or **“Class Members”** means all individuals excluding the defendants and their senior officers and employees, who on March 27, 2011;

- (i) resided in a **Unit** in the **Building**; or
 - (ii) rented a **Unit** in the **Building**; or
 - (iii) were present in the **Building**; or
 - (iv) owned property that was located in a **Unit** in the **Building**;
- (f) **“Coinamatic”** means Coinamatic Canada Inc.;
 - (g) **“CPA”** means the *Class Proceedings Act, 1992*, S.O. 1992 c.6, as amended;
 - (h) **“Explosion”** means an explosion and fire that occurred at the **Building** on March 27, 2011 at approximately 8:20 a.m.;
 - (i) **“Norquay”** means Norquay Developments Limited;
 - (j) **“Paul”** means Paul Rae Gibbon;
 - (k) **“Union Gas”** means Union Gas Limited; and
 - (l) **“Unit”** or **“Units”** means an apartment or other utilizable space located at the **Building**.
2. The plaintiffs claim on their own behalf and on behalf of the Class for:
- (a) an order certifying this action as a class proceeding and appointing them representative plaintiffs of the Class;
 - (b) a declaration that the Explosion which occurred at the Building was caused by the defendants;
 - (c) a declaration that the Explosion which occurred at the Building constituted a nuisance;
 - (d) a declaration that the defendants, or some of them, or one of them, or any combination thereof, were negligent in respect of the Explosion which occurred at the Building;
 - (e) a declaration that the defendants, or some of them, or one of them, are strictly liable for the damages caused by the Explosion under the principle of *Rylands v. Fletcher*;

- (f) a declaration that each of the defendants owed a duty of care to the Class and breached the reasonable standard of care expected of them in the circumstances;
- (g) a declaration that Norquay failed to comply with its obligation pursuant to section 20(1) of the *Residential Tenancies Act, 2006* to maintain the Building in a manner that was fit for habitation and interfered with the Class Members' reasonable enjoyment of the Building and of their Units;
- (h) a declaration that Norquay was in breach of contract to the Class as hereinafter particularized;
- (i) general damages and the costs of administering the plan of distribution of the recovery in this action, in the amount of \$50,000,000, or such other sum as this Honourable Court finds appropriate;
- (j) special damages and pecuniary damages in the amount of \$10,000,000, or such other sum as this Honourable Court finds appropriate;
- (k) such further and other special damages as may be incurred from the date hereof until trial, or final disposition of this action, particulars of which will ultimately be furnished to the defendants;
- (l) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) prejudgment interest, compounded, or pursuant to s. 128 of the *CJA*;
- (n) costs of this action pursuant to the *Act*, or in the alternative, on a substantial indemnity basis, or in the further alternative, in an amount that provides full indemnity, plus applicable taxes; and
- (o) such further and other relief as this Honourable Court deems just.

THE BUILDING AND THE EXPLOSION

3. This action concerns the Explosion which originated in the laundry room located in the basement of the Building at approximately 8:20 a.m. on March 27, 2011.

Smoke emanated as a result of the Explosion and spewed dioxins, furans and hydrocarbons and other toxic material into the Building and into its Units.

4. The Building is located in the City of Woodstock and consists of approximately 45 residential apartments and common areas, including onsite laundry and parking.

5. As a result of the Explosion, the Class Members were evacuated from their Units. They suffered physical injury, including death. Their property was damaged and/or destroyed. Due to the extensive damage and the total destruction of the Building caused by the Explosion, the Class Members have been forced to permanently live in alternate, inadequate accommodations.

6. The Explosion and the consequent release of smoke, vapours and toxins constituted an unreasonable and substantial interference with the reasonable use and enjoyment of the premises and the health, safety, comfort and convenience of the members of the Class for which the defendants, or some of them, or one of them, are strictly liable, and also constituted a nuisance for which the defendants, their agents, servants or employees, any one or all of them, or any combination of them are responsible to the Class.

7. The Explosion and the consequent damages was caused by the breach of contract of Norquay and negligence of the defendants, their agents, servants or

employees, any one or all of them, or any combination thereof, and as such, they are responsible to the Class.

8. As a result of the Explosion, the Building has been demolished and razed to its foundation.

THE PARTIES

Cindy

9. Cindy leased and resided in a Unit in the Building designated as apartment 107.

10. On March 27, 2011, at approximately 8:20 a.m., Cindy was in her Unit when the Explosion occurred. Cindy felt the force of the Explosion and was evacuated from her Unit. She inhaled smoke and noxious fumes.

11. As a result of the Explosion, Cindy experienced panic and terror and feared for her life. She experienced emotional distress and psychiatric injury.

12. As a result of the Explosion, Cindy's Unit and its contents sustained heavy damage. They were covered in smoke and soot. Most of her belongings were destroyed.

13. As a result of the Explosion, Cindy was displaced and forced to find alternate accommodations from March 27, 2011 to the present. She incurred additional costs for accommodation, including hotel charges and food expenses. She incurred the expense of purchasing replacement clothing, toiletries and other necessities of life.

Paul

14. Paul leased and resided in a Unit in the Building designated as apartment 303.

15. On March 27, 2011, at approximately 8:20 a.m., Paul was in his Unit when the Explosion occurred. Paul felt the force of the Explosion and was evacuated from his Unit. He inhaled smoke and noxious fumes.

16. As a result of the Explosion, Paul experienced panic and terror and feared for his life. He experienced emotional distress and psychiatric injury.

17. As a result of the Explosion, Paul's Unit and its contents sustained heavy damage. They were covered in smoke and soot. Most of his belongings were destroyed.

18. As a result of the Explosion, Paul was displaced and forced to find alternate accommodations from March 27, 2011 to the present. He incurred additional costs for accommodation, including hotel charges and food expenses. He incurred the expense of purchasing replacement clothing, toiletries and other necessities of life.

Norquay

19. Norquay is an Ontario corporation with head office in London, Ontario. At all material times, Norquay owned and managed the Building located at 168 Victoria Street South, in Woodstock, Ontario. Norquay is vicariously liable for the acts and omissions of its employees, agents and servants, including Carolyn.

Carolyn

20. Carolyn resides in the Province of Ontario. At all material times, Carolyn was an employee, agent or servant of Norquay and she was the on-site building manager at the Building. Norquay is vicariously responsible for Carolyn's acts and omissions.

Coinamatic

21. Coinamatic is a Canadian corporation with head office in Mississauga, Ontario. At all material times, Coinamatic installed and owned and maintained the gas-powered laundry appliances in the laundry room of the Building. Coinamatic is vicariously liable for the acts and omissions of its employees, agents and servants.

Union Gas

22. Union Gas is an Ontario corporation with head office in Chatham, Ontario. On its website, it describes itself as a major Canadian natural gas storage, transmission and distribution company based in Ontario with 100 years of experience and service to customers. Union Gas' distribution business serves 1.3 million residential, commercial and industrial customers in more than 400 communities across northern, southwestern and eastern Ontario. At all material times, Union Gas supplied and transmitted the natural gas used in the Building for the furnace located in the mechanical room and the appliances located in the laundry room in the Building. Union Gas is vicariously liable for the acts and omissions of its employees, agents and servants.

23. The plaintiffs plead that all defendants can only act through their employees, directors, officers and agents and are vicariously liable for the acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the defendants were authorized, ordered or done by each of the defendants' employees, directors, officers and agents while engaging in the

management, direction and transaction of business of the defendants and are therefore acts and omissions for which the defendants are vicariously liable.

CAUSES OF ACTION

Negligence

24. All of the defendants are liable to the plaintiffs and Class Members in negligence. The Explosion occurred as a result, in whole or in part, of the negligence of the defendants.

Norquay

25. As the owner and manager of the Building, Norquay had a duty of care to the Class Members to carefully design, monitor, operate and maintain the Building, including the laundry room, and to protect against the risk of an explosion. The relationship between the Class Members and Norquay discloses sufficient reasonable foreseeability and proximity to establish a duty of care to the Class Members. Norquay's acts and omissions, as hereinafter particularized, foreseeably caused physical harm, damage and loss to the Class Members.

26. Norquay breached the reasonable standard of care expected in the circumstances and caused damage and loss to the Class Members. Among other things, Norquay:

- (a) failed to properly maintain the Building, including the laundry room;

- (b) failed to maintain the Building, including the laundry room, in accordance with applicable standards;
- (c) failed to maintain the Building, including the laundry room, in a manner which was reasonably required under the circumstances;
- (d) failed to provide adequate procedures for the maintenance of the Building, including the laundry room and the furnace;
- (e) failed to inspect the Building, including the laundry room and the furnace, in a timely manner or at all;
- (f) failed to provide necessary training, facilities, equipment and procedures to ensure that the laundry room and the furnace were properly maintained and were not fire hazards;
- (g) failed to take reasonable steps to ensure that the laundry room was properly designed to accommodate gas powered laundry appliances, including the appliances installed by Coinamatic;
- (h) failed to take reasonable steps to ensure that the laundry room was properly ventilated, or ventilated at all, to accommodate the laundry appliances installed by Coinamatic;
- (i) failed to take reasonable steps to ensure that the laundry room did not have negative air pressure which is an explosion hazard;
- (j) failed to take reasonable steps to ensure that the laundry room was properly equipped with a humidistat;
- (k) failed to take reasonable steps to ensure that the laundry room was properly equipped with a make-up air inlet;
- (l) installed a door to the laundry room which automatically closed upon use, contributing to the lack of ventilation, which is an explosion hazard;
- (m) failed to take reasonable steps to prevent the Explosion;
- (n) failed to ensure that the design of the laundry room complied with all applicable codes and standards;
- (o) failed to properly inform, instruct, supervise and/or inspect the work of its employees, including Carolyn, and contractors, including Coinamatic;

- (p) permitted or allowed unauthorized, untrained inexperienced individuals to oversee the management and perform the work at the Building; and
- (q) hired incompetent employees, including Carolyn.

Carolyn

27. As the on-site manager of the Building, Carolyn had a duty of care to the Class Members to carefully monitor, operate and maintain the Building, including the laundry room, and to protect against the risk of an explosion. The relationship between the Class Members and Carolyn discloses sufficient reasonable foreseeability and proximity to establish a duty of care to the Class Members. Carolyn's acts and omissions, as hereinafter particularized, foreseeably caused physical harm, damage and loss to the Class Members.

28. Carolyn breached the reasonable standard of care expected in the circumstances and caused damage and loss to the Class Members. Among other things, Carolyn:

- (a) failed to take steps to properly maintain the Building, including the laundry room;
- (b) failed to take steps to properly maintain the Building, including the laundry room, in accordance with applicable standards;
- (c) failed to maintain the Building, including the laundry room, in a manner which was reasonably required under the circumstances;
- (d) failed to provide adequate procedures for the maintenance of the Building, including the laundry room and the furnace;
- (e) failed to inspect the Building, including the laundry room and the furnace, in a timely manner or at all;

- (f) failed to take necessary steps to ensure that the laundry room and the furnace were properly maintained and were not fire hazards;
- (g) failed to notify Norquay that there was no air flow, or inadequate air flow in the laundry room;
- (h) failed to notify Norquay that the laundry room was too dry and had insufficient ventilation to safely operate gas fuelled laundry appliances; and
- (i) failed to notify emergency response personnel, immediately, or at all, when she heard a “hissing noise” emanating from the laundry room or furnace on the morning of March 27, 2011.

Coinamatic

29. As the installer of the laundry appliances in the Building, Coinamatic had a duty of care to the Class Members to ensure that the laundry appliances were operated in a safe and secure environment, and to protect against the risk of an explosion. The relationship between the Class Members and Coinamatic discloses sufficient reasonable foreseeability and proximity to establish a duty of care to the Class Members. Coinamatic’s acts and omissions, as hereinafter particularized, foreseeably caused physical harm, damage and loss to the Class Members.

30. Coinamatic breached the reasonable standard of care expected in the circumstances and caused damage and loss to the Class Members. Among other things, Coinamatic:

- (a) failed to take reasonable steps to ensure that the laundry room was properly designed to accommodate gas powered laundry appliances installed by Coinamatic;

- (b) failed to take reasonable steps to ensure that the laundry room was properly ventilated, or ventilated at all, to accommodate the laundry appliances installed by Coinamatic;
- (c) failed to take reasonable steps to ensure that the laundry room did not have negative air pressure which is an explosion hazard;
- (d) failed to take reasonable steps to ensure that the laundry room was properly equipped with a humidistat;
- (e) failed to take reasonable steps to ensure that the laundry room was properly equipped with a make-up air inlet;
- (f) failed to take reasonable steps to ensure that the laundry appliances installed by Coinamatic could safely operate in the laundry room;
- (g) failed to take any reasonable steps to prevent the Explosion;
- (h) failed to ensure that the design of the laundry room complied with all applicable codes and standards before installing the laundry appliances;
- (i) failed to properly inform, instruct, supervise and/or inspect the work of its employees and contractors;
- (j) permitted or allowed unauthorized, untrained inexperienced individuals to install the laundry appliances; and
- (k) hired incompetent employees.

Union Gas

31. As the provider and distributor of natural gas into the Building, Union Gas had a duty of care to the Class Members to ensure that the delivery of natural gas to the Building was done in a safe and secure manner, and to protect against the risk of an explosion. The relationship between the Class Members and Union Gas discloses sufficient reasonable foreseeability and proximity to establish a duty of care to the Class

Members. The acts and omissions of Union Gas, as hereinafter particularized, foreseeably caused physical harm, damage and loss to the Class Members.

32. Union Gas breached the reasonable standard of care expected in the circumstances and caused damage and loss to the Class Members. Among other things,

Union Gas:

- (a) failed to take reasonable steps to ensure that natural gas was delivered to the Building in a safe manner;
- (b) failed to take reasonable steps to ensure that natural gas was delivered to the Building in a manner that would not cause an explosion;
- (c) failed to take reasonable steps to ensure the gas train, or gas line or gas piping which delivered natural gas to the Building was in good working order;
- (d) failed to take reasonable steps to inspect the gas train, or gas line or gas piping which delivered natural gas to the Building to ensure that it was in good working order;
- (e) failed to take reasonable steps to properly maintain the gas train, or gas line or gas piping which delivered natural gas to the Building;
- (f) supplied a cracked gas train, gas line or gas piping for delivery of natural gas to the Building;
- (g) failed to take any reasonable steps to prevent the Explosion;
- (h) failed to ensure that its gas train, gas line or gas piping were free from defects and in good working condition;
- (i) failed to properly inform, instruct, supervise and/or inspect the work of its employees and contractors;
- (j) permitted or allowed unauthorized, untrained inexperienced individuals; and
- (k) hired incompetent employees.

Breach of Contract

33. The relationship between the plaintiffs, the Class Members and Norquay was contractual in nature.

34. It was an express term, or alternatively, an implied term, of the rental contract that Norquay was responsible for providing and maintaining the Building, including its common areas, in a good state of repair and in a manner that was fit for habitation and for complying with health, safety, housing and maintenance standards.

35. Norquay failed to maintain the Building, including the laundry room and the furnace room, and is therefore in breach of contract. Some of the instances of Norquay's breach of contract with the Class Members follow:

- (a) it failed to properly maintain the Building, including the laundry room;
- (b) it failed to maintain the Building, including the laundry room, in accordance with applicable standards;
- (c) failed to maintain the laundry room in a manner that was suitable to accommodate gas powered laundry appliances;
- (d) failed to take maintain the laundry room to ensure it was properly ventilated, or ventilated at all, to accommodate the gas powered laundry appliances;
- (e) failed to take maintain the laundry room in a manner so that it did not have negative air pressure which is an explosion hazard;
- (f) failed to maintain the laundry room by ensuring that it had a proper humidistat; and
- (g) failed to maintain the laundry room by ensuring that it had proper ventilation.

36. The Building was not maintained in a good state of repair and in a manner that was fit for habitation. The Building, including the laundry room and the furnace room, did not comply with health, safety, housing and maintenance standards. Ultimately, on March 27, 2011, the Building exploded and was demolished.

37. It was also an express term of the rental contract that Norquay would not terminate the rental contract without adequate notice. On March 27, 2011, the rental contract was breached by Norquay when the Building exploded, as Norquay failed to provide Units that were fit for habitation to the plaintiffs and the Class Members.

38. The plaintiffs plead that as a result of the breach of contract, Norquay is liable to the Class for damages as hereinafter particularized at paragraphs 48 through 50.

Nuisance

39. The escape of propane and the Explosion substantially and unreasonably interfered with the plaintiffs' and Class Members use and enjoyment of the Building and their Units. The defendants Norquay and Union Gas are strictly liable for the nuisance.

40. Norquay is liable in nuisance because it is the owner and manager of the Building from which the nuisance emanated. As the owner and manager of the Building, Norquay has management and control of the Building, including the laundry room and the furnace room. Norquay is also liable in nuisance because the nuisance arose from a use of the Building which was contemplated by the terms of the lease

between Norquay and the Class Members, namely the use and operation of the laundry appliances.

41. Union Gas is liable in nuisance because it controlled the distribution and delivery of natural gas to the Building. Union Gas has management and control of the gas train or gas line or gas piping.

42. The escape of natural gas and other contaminants and the Explosion constitutes a public nuisance causing harm to the environment under the *Environmental Bill of Rights, S.O. 1993, C.28*. The plaintiffs plead and rely on section 103 of that statute which permits any person who suffered personal injury or direct economic loss as a result of a public nuisance causing harm to the environment to bring an action in respect of such losses.

43. The plaintiffs and other Class Members suffered damages as a result of the nuisance as hereinafter particularized at paragraphs 48 through 50. These damages were a reasonably foreseeable result of the nuisance for which the defendants, Norquay and Union Gas are liable.

Strict Liability

44. The natural gas distributed by Union Gas is highly dangerous. Under the common law of Ontario, the storage and distribution of large quantities of natural gas constitutes a non-natural use of the Building. The defendants Norquay and Union Gas

are therefore liable for all damages flowing from the escape of natural gas from the Building.

45. On March 27, 2011, Union Gas failed to prevent the escape of a large quantity of natural gas in and around the Building. The escape of the natural gas caused the Explosion which resulted in personal injury to some members of the Class, damaged the property of the Class Members and resulted in an evacuation of the Building. Union Gas is therefore liable for all damages flowing from the escape of natural gas from the Building.

46. Norquay is also strictly liable for the damage caused by the escape of propane and other gases because they owned and maintained the Building. As owners and managers of the Building, Norquay exercised control over the Building, including the basement, where the Explosion originated.

47. The plaintiffs and other Class Members suffered damages, as hereinafter particularized at paragraphs 48 through 50. These damages were a reasonably foreseeable result of the use of the Building for which the defendants Union Gas and Norquay are strictly liable.

DAMAGES

48. As a result of the acts and omissions described above, the plaintiffs and the Class Members sustained damages, including personal injury, displacement, emotional distress and economic loss for which the defendants are liable. The plaintiffs and Class Members will continue to suffer loss and damage, including physical injuries, interference with their safety, comfort and convenience. They incurred expenses, including relocation costs, cleanup expenses and loss of income, all of which was foreseeable and the direct result of the Explosion at the Building.

49. The defendants are liable to pay damages to the Class Members, including, but not limited to, damages on account of:

- (a) the inhalation of smoke, noxious fumes and other physical injuries, including death;
- (b) psychiatric injuries, including emotion distress and post-traumatic stress disorder caused by the Explosion;
- (c) property damaged, destroyed or stolen;
- (d) the additional accommodation costs incurred because they could not occupy their Units;
- (e) out-of-pocket expenses, including the cost of food, clothing and other essential expenses;
- (f) damage to their property which was located in their Units, including damage to motor vehicles and the cost of alternate accommodation;
- (g) lost income;
- (h) damages for the inconvenience of being displaced from their Units; and
- (i) the legal costs they incurred or which were incurred on their behalf to deal with landlord/tenant issues and insurance issues.

50. The defendants, or any one or more of them, are liable to pay damages to the Class.

RELEVANT STATUTES

51. The plaintiffs plead and rely upon the following statutes and regulations thereunder, as amended: the *CJA, CPA*, the *Negligence Act*, R.S.O. 1990, c.N-1, the *Occupiers' Liability Act*, R.S.O. 1990, c. O-2., the *Residential Tenancies Act, 2006*, S.O. 2006, c.-17, *Environmental Bill of Rights, S.O. 1993, C.28*, and strict liability under the principle of *Rylands v. Fletcher* (1868), L.R.3 H.L. 330.

PLACE OF TRIAL

52. The plaintiffs propose that this action be tried in the City of Woodstock.

July 29, 2011

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Plaintiffs

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Defendants

Court File No. CV11-16524

**ONTARIO
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PROCEEDINGS COMMENCED AT WINDSOR

STATEMENT OF CLAIM

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