

OCT 18 2019

Halifax, N.S.

Hfx. No. 493055

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THORNBLOOM BOUTIQUE LIMITED

PLAINTIFF

- AND -

W. M. FARES ARCHITECTS INC., a N.S. Limited Company; **W. M. FARES & ASSOCIATES INCORPORATED**, a N.S. Limited Company; **LEAD STRUCTURAL FORMWORK LTD.**, a body corporate; and **THE MANITOWOC COMPANY, INC.**, a body corporate

DEFENDANTS

Proceeding under the Class Proceedings Act, S.N.S 2007, c. 28

NOTICE OF ACTION

TO: W. M. FARES ARCHITECTS INC.
3480 Joseph Howe Drive, 5th Floor
Halifax, NS B3L 4H7

AND TO: W. M. FARES & ASSOCIATES INCORPORATED
3480 Joseph Howe Drive, 5th Floor
Halifax, NS B3L 4H7

AND TO: LEAD STRUCTURAL FORMWORK LTD.
40 Loftus Street
Moncton, NB E1E 2N2

AND TO: THE MANITOWOC COMPANY, INC.
11270 West Park Place
Suite 1000
Milwaukee, WI 53224
USA

Action has been started against you
The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiff designates the following address:

Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, N.S. B3J 1S9

Documents delivered to this address are considered received by the plaintiff on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed October 18, 2019.



Raymond F. Wagner, Q.C.
Wagners
Counsel for the Plaintiff

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on October 18, 2019.



JESSICA HEARN
Deputy Prothonotary
Prothonotary

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. SUMMARY OF THE CLAIM

1. On September 7, 2019 post-tropical storm Dorian passed over the province of Nova Scotia. A construction crane (the “Crane”) was situated on Brenton Place, a residential condominium property being constructed. The Crane collapsed onto the Olympus, a nearby residential condominium tower under construction near the intersection of South Park Street and Spring Garden Road in Halifax, and in doing so also impacted the corner of an adjacent condominium building, The Trillium, at 1445 South Park Street.
2. On September 9, 2019 the Halifax Regional Fire and Emergency issued an Emergency Evacuation Order (the “Emergency Evacuation Order”) affecting approximately 30 residents of the Trillium Building, residents of residential buildings and at least six commercial businesses located within the boundaries of Cathedral Lane, and bordered by Brenton Street, Brenton Place and Spring Garden Road (the “Boundaries”). Some of the civic addresses of those affected by the Emergency Evacuation Order were 1445 South Park Street (The Trillium), units 1306, 1206, 1105, 1005, 905, 805, 705, 605, 505, and 405; 1459, 1463, 1477, and 1491 South Park Street; and 5688 and 5690 Spring Garden Road.
3. On September 13, 2019 the Nova Scotia Minister of Labour and Advanced Education announced that work to remove the Crane would begin that weekend as a structural engineering report had been completed and approved by the Department of Labour and Advanced Education as well as by the Halifax Regional Fire and Emergency.
4. However, the removal of the Crane did not actually commence until October 13, 2019.
5. On September 18, 2019 the Province of Nova Scotia held a press conference and declared a localized state of emergency pursuant to the *Emergency Management Act*, S.N.S. 1990, c. 8 within the Boundaries. The state of emergency was purportedly declared in order to speed up removal of the Crane. The first declaration of a state of emergency remained in effect for 14 days.

6. On September 23, 2019 the Nova Scotia Department of Transportation and Infrastructure announced the hiring of two firms, Harbourside Engineering Consultants and R&D Crane Operator Ltd., to secure and remove the Crane from the Olympus and to repair any damage.
7. Over the course of September 28 and 29, 2019, final inspections were conducted to allow for the commencement of the removal of the Crane. The removal process was to begin by securing the Crane to the Olympus.
8. On October 2, 2019, the Province of Nova Scotia extended the Emergency Evacuation Order for another 14 days.
9. On October 11, 2019, Halifax Regional Fire and Emergency ordered that eleven additional residential units of The Trillium at 1445 South Park Street were required to evacuate prior to 6:00 a.m. on October 13, 2019 as a safety precaution.
10. On October 13, 2019, work commenced to dismantle the Crane and its components.
11. On October 14, 2019, the Emergency Evacuation Order was lifted for 5690 Spring Garden Road and 1491 South Park Street, allowing for approximately three residents and one business to return to their premises. However, Halifax Regional Fire and Emergency advised that previously evacuated areas could not return to their premises and did not provide a return date.
12. On October 16, 2019, the Province of Nova Scotia extended the state of emergency for a further 14 days.
13. As of the date of filing, the process to remove the Crane appears to be ongoing with no communication as to when the affected residents and businesses may return to the affected properties. The Emergency Evacuation Order and localized state of emergency remain in effect for residents and businesses at the following addresses:

The Trillium at 1445 South Park Street, units 1306, 1206, 1105, 1005, 905, 805, 705, 605, 505, and 405;

1459, 1463 and 1477 South Park Street; and
5688 Spring Garden Road.

14. This action is brought on behalf of a proposed Class consisting of two subclasses:
 - a) Resident Subclass: All residents (other than the Defendants and their parent companies, affiliates or subsidiaries) who, as of September 7, 2019, resided at one of the addresses that was or is subject to the Emergency Evacuation Order and the declared localized state of emergency.
 - b) Commercial Subclass: All commercial entities (other than the Defendants and their parent companies, affiliates or subsidiaries) carrying on business at one of the addresses that was or is subject to the Emergency Evacuation Order and the declared localized state of emergency.
15. Members of the Resident and Commercial subclasses are collectively referred to as “Class Members”, or the “Class”.
16. In this action the Plaintiff seeks, on its own behalf and on behalf of the Class, damages for nuisance and negligence.

II. THE PARTIES

a. The Plaintiff and Class

17. The Plaintiff, Thornbloom Boutique Limited, operates a home décor, furniture and accessory store in a building located at 1459 South Park Street in the South End of Halifax.
18. Thornbloom’s sales revenue derives in significant part from sales made to walk-in customers, therefore pedestrian traffic is essential to Thornbloom’s business.
19. Due to the actions and omissions of the Defendants, Thornbloom has been closed to customers since September 7, 2019 and remains closed to date.
20. Due to the Emergency Evacuation Order and localized state of emergency, customers have been unable to visit Thornbloom. As a result Thornbloom has suffered a significant

reduction in sales revenue.

21. Approximately eight businesses were closed due to the Crane collapse. These businesses are located on street-level and rely on foot traffic to secure business. Three businesses remain closed to date. Two other businesses were forced to close early for the season, foregoing expected revenue. Two businesses were given confirmation they could return to their premises, however sidewalk access is impeded.
22. Members of the Commercial Subclass have suffered loss and damages as a result of the Crane collapse, including loss of revenue due to interruption of commercial activity, lost rent and operating expenses including utilities, costs incurred due to evacuation, and additional expenses incurred as a result of the need to temporarily relocate. The owners and operators of the members of the Commercial Subclass have suffered psychological harm.
23. Members of the Resident Subclass have suffered loss and damages as a result of the Crane collapse, including costs incurred to temporarily relocate (including unexpected accommodation and transportation costs), payment of rent, utility costs and other living expenses despite being unable to remain in their residences, and additional living expenses. Members of the Resident Subclass have also suffered psychological harm.
24. The Plaintiff seeks to certify this action as a class proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28 (the "Act").
25. The Plaintiff, as the proposed representative plaintiff, does not have any interest adverse to any of the members of the proposed Class. The Plaintiff states that there is an identifiable Class that would be fairly and adequately represented by it, that its claim raises common issues, and that a class action is the preferable procedure to resolve the common issues of the Class.
26. The Plaintiff states that the Defendants are responsible, jointly and severally, for the losses, injuries and damage alleged herein.
27. The Plaintiff pleads the doctrine of *respondeat superior* and states that the Defendants are vicariously liable to the Plaintiff and Class Members for the acts, omissions, deeds,

misdeeds and liabilities of their contractors, sub-contractors, agents, representatives, servants, employees, assigns, appointees and partners.

28. The Plaintiff alleges that the actions and omissions of the Defendants, detailed below, caused or contributed to the losses, injuries and damage alleged herein.

b. The Defendants

29. The Defendants, W.M. Fares Architects Inc. ("Fares Architects") and W.M. Fares & Associates Incorporated ("Fares Associates"), are responsible for the development of Brenton Place, the construction of which is the reason the Crane was erected and was present in the Boundaries, and for the safe use of the Crane. Their head offices are located at 3480 Joseph Howe Drive, 5th Floor, Halifax, Nova Scotia.
30. The Defendant, Lead Structural Formwork Ltd. ("Lead") is the owner, operator and installer of the Crane. Lead's head office is located at 40 Loftus Street, Moncton, New Brunswick.
31. Lead, through and with its contractors, subcontractors, agents, servants, employees, appointees and departments, is responsible for the installation, operation and maintenance of the Crane.
32. The Manitowoc Company, Inc. ("Manitowoc") is the designer, producer, fabricator and seller of the Crane. Manitowoc's head office is located at 11270 West Park Place, Suite 1000, Milwaukee, Wisconsin, USA.
33. Manitowoc, through and with its contractors, subcontractors, agents, servants, employees, appointees and departments, is responsible for the design, production, fabrication and sale of the Crane. Large construction cranes of the type that collapsed are intended to rotate on their tower, similar to a weather vane, with the swing brake off so that the crane will automatically turn to compensate for the wind direction.

III. CAUSES OF ACTION

a. *Negligence*

34. The Defendants owed a duty of care to the Plaintiff and the Class to use reasonable care in the design, production, fabrication, installation, operation, maintenance, and use of the Crane. The Defendants breached the applicable standard of care by negligently designing, producing, fabricating, installing, operating, maintaining and using the Crane. It is reasonably foreseeable that a failure to adhere to the standard of care could cause significant harm to the Plaintiff and Class.
35. The duty of care owed to the Plaintiff and Class requires the Defendants to take reasonable steps to avoid injury, loss or damage to members of the Resident and Commercial Subclasses. At all material times hereto, the standard of care applicable to the Defendants' activities required them to take reasonable steps to prevent, minimize or eliminate the potential for injury, loss or damage to members of the Resident and Commercial subclasses. Such negligence includes, but is not limited to, the following;
- a) choosing to install a Crane of inappropriate and inadequate design not built to withstand wind loads outlined in the Canadian Standard Association's *Code for Tower Cranes*, Z248-17 and the *Technical Safety Act*, S.N.S. 2008, c. 10 and applicable regulations;
 - b) choosing not to take adequate precautions with respect to the Crane when they had advance warning of severe and adverse weather conditions;
 - c) choosing not to set the Crane to freely rotate on its vertical axis;
 - d) choosing not to dismantle and/or remove the Crane from the site in the face of known severe and adverse weather conditions;
 - e) choosing not to take immediate corrective action to secure, dismantle and remove the collapsed Crane;
 - f) failing to remove the Crane with reasonable diligence to minimize harm to the Class; and

g) any other such negligence as may arise from the evidence.

36. The injury, loss and damage caused to the Plaintiff and Class as outlined herein is a foreseeable result of the Defendants' negligence. The collapse of the Crane has caused, and continues to cause, damage to the Plaintiff and Class as pleaded herein. The Defendants' failure to exercise a sufficient standard of care has caused the damages suffered by the Plaintiff and Class.

b. Nuisance

37. The collapse of the Crane caused damage and loss to the Plaintiff and Class as outlined in paragraphs 22 and 23 herein. These detrimental effects are material, actual and readily ascertainable.

38. The Defendants are liable to the Plaintiff and Class for having committed the tort of nuisance.

39. No or no adequate measures or safeguards were taken by the Defendants to implement any effective or appropriate methods to prevent the Crane collapse or minimize the impact to the Class. The Plaintiff and Class state that:

- a) the Defendants chose not to dismantle or secure the Crane despite knowing of severe and adverse weather conditions;
- b) the Defendants chose not to conform to industry standards, practices and regulations in the design, production, fabrication, installation, operation, maintenance, and use of the Crane;
- c) the Defendants chose not to conduct adequate and routine inspections of the Crane to ensure that no hazards or potential hazards existed; and
- d) the Defendants chose not to take necessary steps to dismantle or remove the Crane when it was apparent that severe and adverse weather conditions had the potential to cause the Crane to collapse, impacting the Class.

40. The material harm caused by the Defendants' actions and omissions is borne directly by the Plaintiff and Class. The actions and omissions of the Defendants caused the Plaintiff and Class to suffer a substantial and unreasonable interference with the use, safe habitation and enjoyment of their properties.

IV. RELIEF REQUESTED

41. The Plaintiff and Class have suffered harm and damages, for which the Defendants are jointly and severally liable. The Plaintiff seeks the following relief on its own behalf and on behalf of the Class:

- a) an order certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class;
- b) general damages;
- c) special damages;
- d) recovery of costs incurred by subrogated insurers of the Class;
- e) pre-judgment interest;
- f) costs; and
- g) such further and other relief as this Honourable Court may deem just.

DATED at Halifax, in the Province of Nova Scotia, this 18th day of October, 2019.



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