

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) THURSDAY, THE 13TH
)
JUSTICE PATTERSON) DAY OF AUGUST, 2015

**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

- and -

ALLIANCE LAUNDRY HOLDINGS LLC, ALLIANCE LAUNDRY SYSTEMS LLC,
and WD HOLDINGS INC.

Third Parties

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Moving Parties, Cindy Marie Gale and Paul Rae Gibbon, for:

1. Orders pursuant to Rule 30.10 of the *Rules of Civil Procedure*, compelling the Technical Standards & Safety Authority (the "TSSA"), the Ontario Provincial Police (the "OPP"), Toronto Police Services ("TPS"), and Ministry of Labour ("MOL") to produce and make available to the lawyers representing the parties in this action a complete and unedited copy of the investigation documents and evidence made with

respect to the fire and explosion that occurred at 168 Victoria Street South, in the City of Woodstock (the “Building”) on March 27, 2011 (the “Explosion”);

2. An Order pursuant to Rule 30.10 of the *Rules of Civil Procedure*, compelling the Office of the Fire Marshall (the “OFM”) to produce and make available to the lawyers representing the parties in this action certain complete and unedited documents and evidence made with respect to the Explosion;

3. An Order extending the deadline for the Plaintiffs to provide the expert opinion on the cause of the explosion of Vincent Rochon, P.Eng. set by Justice Patterson at the case conference of April 10, 2015; and

4. Costs from any party who opposes this motion,

was heard this day at Windsor.

ON READING the Motion Record of the Plaintiffs, and on hearing the submissions of the lawyer for the Moving Parties, Cindy Marie Gale and Paul Rae Gibbon; and

ON BEING ADVISED that: a) the defendants Norquay Developments Limited and Carolyn Dedrick consent to the relief sought; b) the third parties Alliance Laundry Holdings LLC, Alliance Laundry Systems LLC and non-parties the OFM, MOL, OPP and TPS do not oppose the relief sought; and c) the defendants Coinamatic Canada Inc. and Union Gas Limited, the third party WD Holdings Inc., and the non-party TSSA, though duly served, have not taken a position on this motion;

1. **THIS COURT ORDERS** that an Order be granted pursuant to Rule 30.10 of the *Rules of Civil Procedure*, compelling the TSSA to produce and make available to the lawyers representing the parties in this action a complete and unedited copy of the investigation documents and evidence made with respect to the Explosion, including, *inter alia*:

- (i) The field notes (written notes, calculations, and drafts), photographs, reports, letters and any other documentation of Gary Coad, Ralph Sherbert and Charlie Landriault relating to the investigation conducted on behalf of the TSSA; and
- (ii) Reference documents relied upon by the TSSA.

2. **THIS COURT ORDERS** that an Order be granted pursuant to Rule 30.10 of the *Rules of Civil Procedure*, subject to the conditions and limitations set out in paragraph 8 of this Order, compelling the OFM to produce and make available to the lawyers representing the parties in this action the following complete and unedited documents and evidence made with respect to the Explosion:

- (i) The field notes, photographs, letters, calculations and other documentation relating to the site investigation of the OFM engineers, John McGlashan and Eerik Ransalu;
- (ii) The entire file documentation of OFM engineer Christine Mak, including reports, letters, photographs, field notes, building plan documents and any other documentation collected during her investigation;
- (iii) A list of reference documents relied upon by the OFM engineers in conducting their investigation;
- (iv) A comprehensive list of all exhibits seized by the OFM, or by any other parties while the scene of the Explosion was under the control of the OFM;
- (v) Handwritten notes or notebook entries relating to the scene inspections by the OFM investigator;
- (vi) Handwritten notes or notebook entries relating to both the scene inspections and laboratory inspection/testing by the OFM engineers;
- (vii) All notes pertaining to the testing of the dryer gas controls and piping;

- (viii) Photographs taken by the OFM's engineer relating to the testing and the evidence inspected within the laboratory;
- (ix) A copy of any manufacturer information obtained by the OFM, pertaining to Dryer #3 and its gas control valve and controls; and
- (x) Any blueprints available which shall be made available for viewing at the offices of the OFM by appointment;

3. **THIS COURT ORDERS** that an Order be granted pursuant to Rule 30.10 of the *Rules of Civil Procedure*, subject to the conditions and limitations set out in paragraph 9 of this Order, compelling the OPP to produce and make available to the lawyers representing the parties in this action a complete and unedited copy of the investigation documents and evidence made with respect to the Explosion, including, *inter alia*:

- (i) File documentation of OPP Staff Sergeants Rick Tout, James Bock and Mike Dolderman;

4. **THIS COURT ORDERS** that an Order be granted pursuant to Rule 30.10 of the *Rules of Civil Procedure*, subject to the conditions and limitations set out in paragraph 10 of this Order, compelling the TPS to produce and make available to the lawyers representing the parties in this action a complete and unedited copy of the investigation documents and evidence made with respect to the Explosion, including, *inter alia*:

- (i) File documentation of Toronto Police Sergeant Steven Sadler;

5. **THIS COURT ORDERS** that an Order be granted pursuant to Rule 30.10 of the *Rules of Civil Procedure*, subject to the conditions and limitations set out in paragraph 11 of this Order, compelling the MOL to produce and make available to the lawyers representing the parties in this action a complete and unedited copy of the investigation documents and evidence made with respect to the Explosion, including, *inter alia*:

- (i) File documentation of Roger Jeffreys, P.Eng, Head Investigator, John Bradford, Brian Saunders, Chris Dama, John McEachern and Mark Koehler as it relates to the OFM's investigation of this matter;

6. **THIS COURT ORDERS** that the deadline for the Plaintiffs to provide the expert opinion on the cause of the explosion of Vincent Rochon, P.Eng. set by Justice Patterson at the case conference of April 10, 2015 be and is hereby vacated.

7. **THIS COURT ORDERS** that parties who are or come to be in possession of any records as a result of this Order are permitted to disclose and produce those records with other parties in the within action;

8. **NOTWITHSTANDING PARAGRAPH 2 ABOVE, THIS COURT ORDERS** that production of documents by the OFM may be subject to the following redactions:

- (i) Names and contact information of third parties who are related to the investigation underlying this proceeding shall be produced. However, other identifiers of those third parties including, *inter alia*, social insurance numbers, dates of birth, next of kin, drivers' licence numbers, and vehicle licence plate information will be redacted;
- (ii) Administrative correspondence will not be produced;
- (iii) Any records or portions thereof over which a claim of privilege is asserted will be redacted. However, a list of such records will be provided to the lawyer for the moving party and shall include the basis upon which privilege is being asserted for each record or portions thereof;
- (iv) No records that were prepared by and/or are the property of someone other than the OFM will be produced; however, this does not include records that were prepared for or on behalf of the OFM;
- (v) Sensitive or disturbing photographs will not be produced without the express consent of the family of any deceased;
- (vi) The OFM is not required to create any new records for the purposes of this motion; and

- (vii) The records to be produced are those that are in the possession and control of the OFM and nothing in this Order requires the OFM to search or obtain documents from any other agency or person.

9. **NOTWITHSTANDING PARAGRAPH 3 ABOVE, THIS COURT ORDERS** that production of documents by the OPP under paragraph 3 of this Order shall be subject to the following conditions and limitations:

- (i) Names and contact information of individuals who are not parties to the underlying action will be included, however, any personal information of non-parties including social insurance numbers, employment information, dates of birth, next of kin names, driver's licence information, personal health information etc., will be redacted
- (ii) Administrative correspondence will not be produced;
- (iii) Any information which could compromise law enforcement interests, including confidential law enforcement material and informant information, CPIC and FPS numbers and other confidential police codes and identifying numbers will be redacted;
- (iv) Any records or portions thereof over which a claim of privilege is asserted will be redacted. However, a list of such records will be provided to the lawyer for the moving party and shall include the basis upon which privilege is being asserted for each record or portions thereof; and
- (v) In the event that the records are found to include any information subject to the provisions of the *Youth Criminal Justice Act* ("YJCA"), that information will only be disclosed in accordance with the YCJA.

10. **NOTWITHSTANDING PARAGRAPH 4 ABOVE, THIS COURT ORDERS** that production of documents by the TPS under paragraph 4 of this Order shall be subject to the following conditions and limitations:

- (i) The records copied and produced shall only be used by the parties directly involved in the litigation of this matter for the full and fair disposition of the issues in the within action;
- (ii) The parties directly involved in the litigation of this matter, including any retained experts, shall not disclose the records or any information

contained therein to any person who does not have a direct interest in the within action;

- (iii) The TPS will only produce those records in its possession and control, and nothing in this Order shall require the TPS to search or obtain documents from any other agency or person;
- (iv) The TPS is not required to produce any records that it did not create, but that may be contained in the investigative file. Such records may include those created by other agencies or persons, such as the Special Investigations Unit, hospitals or medical professionals. The TPS shall note the existence of such records, however production must be sought and obtained from the agency or person from which or from whom they originate;
- (v) No records concerning young persons that are subject to the YCJA will be produced, unless such records can be severed or redacted in such a way so as to protect the identity of the young person to whom the records relate or unless a Justice of the Youth Court orders production of such unredacted records upon application for same, and in compliance with the YCJA;
- (vi) The TPS shall redact any information that, if produced, would compromise law enforcement interests by revealing, *inter alia*, confidential police investigative techniques, or the identity of any confidential informant;
- (vii) Any records or portions thereof over which a claim of privilege is asserted will be redacted. However, a list of such records will be provided to the lawyer for the moving party and shall include the basis upon which privilege is being asserted for each record or portions thereof;
- (viii) Names and contact information of third parties who are related to the investigation underlying this proceeding shall be produced. However, other identifiers of those third parties including, *inter alia*, social insurance numbers, dates of birth, next of kin, drivers' licence numbers, and vehicle licence plate information will be redacted; and
- (ix) Within 30 days following a receipt of a copy of this Order, the TPS shall assemble and produce to the solicitor for the moving party one (1) copy of the records so Ordered. The TPS shall be entitled to charge the moving party reasonable fees for the copying and delivery of the records, which fees may be required prior to delivery.

11. **NOTWITHSTANDING PARAGRAPH 5 ABOVE, THIS COURT ORDERS** that production of documents by the MOL under paragraph 5 of this Order shall be subject to the following conditions and limitations:

- (i) All documents contained in the Ministry of Labour investigative brief shall only be used and disclosed by the parties and their counsel for the purpose of the above action;
- (ii) The parties and their counsel shall not disclose the documents produced or copied, or any information contained therein, to any other person, except as provided for in paragraph 10(ii) above;
- (iii) The parties will undertake to destroy any copies of the MOL brief previously in their possession;
- (iv) The Ministry of Labour will only produce those documents in its possession and control, and nothing in this Order shall require the Ministry or Labour to search for or obtain documents from any other agency or person;
- (v) Any documents or portions thereof over which a claim of privilege is asserted will be redacted. However, a list of such documents will be provided to the lawyer for the moving party including the basis upon which privilege is being asserted for each document or portions thereof;
- (vi) Non-Ministry of Labour documents, including hospital or medical reports or police records that are contained in the Ministry of Labour investigative brief will not be produced and must be obtained from the institute from where they originate. The existence of any such records will, however, be noted;
- (vii) Copies of Ministry of Labour inspector notebooks shall be edited to remove references to incidents unrelated to this ongoing litigation;
- (viii) Names and contact information of third parties contained in the Ministry of Labour investigative file shall be produced. However other personal information or personal identifiers of those third parties including, *inter alia*, social insurance numbers, dates of birth, next of kin, drivers' licence numbers and vehicle licence plate information, will be redacted.

12. **THIS COURT ORDERS** that the moving parties may make a motion on ten (10) days notice to request unredacted copies of any redacted records produced.

13. **THIS COURT ORDERS** that there be no costs of this motion.



JUSTICE PATTERSON

ENTERED AT WINDSOR	
In Book No.	26
re Document No.	972
on	Aug. 14 2015
by	DF

GALE et al
Plaintiffs

-and- NORQUAY DEVELOPMENTS LIMITED et al
Defendants

Court File No. CV-11-16524

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT WINDSOR

ORDER

CHARNEY LAWYERS

151 Bloor Street West, Suite 890
Toronto, ON M5S 1P7

THEODORE P. CHARNEY (LSUC #: 26853E)
SAMANTHA D. SCHREIBER (LSUC #: 63861B)
Tel: 416.964.7950
Fax: 416.964.7416

SUTTS, STROSBERG LLP

Lawyers
600 - 251 Goyeau Street
Windsor, ON N9A 6V4

HARVEY T. STROSBERG, Q.C. (LSUC #: 12640O)
SHARON STROSBERG (LSUC #: 44233W)
Tel: 519.561.6228/519.561.6244
Fax: 519.561.6203

Lawyers for the Plaintiffs