

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court seal)

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 933

Plaintiff

- and -

ICC PROPERTY MANAGEMENT LTD., and MASSIMO MUSSO

Defendants

STATEMENT OF CLAIM

Notice of action issued on November 10, 2015

1. The Plaintiff's claim is for:
 - (a) Damages in the amount of \$900,000 for breach of contract, negligence, breach of trust, breach of fiduciary duty, unjust enrichment, conversion, and fraud;
 - (b) Pre- and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990 c. C.43.
 - (c) Cost on a substantial indemnity basis; and,
 - (d) such further and other relief as this Honourable Court deems just.

2. The Plaintiff, Metropolitan Toronto Condominium Corporation No. 933 ("MTCC 933") is a condominium corporation, located in Toronto, Ontario, created by registration of its declaration (the "**Declaration**") on or about around November 29, 1990.

3. MTCC 933 and all of its owners operate under and are bound by the *Condominium Act, 1998*, S.O. 1998 c. 19 (the "**Act**").
4. Notice of this action was sent to all owners of MTCC 933 on or about November 9, 2015.
5. The Defendant ICC Property Management Ltd. ("**ICC**") is an Ontario corporation and at all relevant times the property manager of MTCC 933.
6. The Defendant Massimo Musso ("**Musso**") is an Ontario resident. At all relevant times Musso was employed by ICC to be the on-site property manager of MTCC 933.

Facts

7. The Plaintiff and the Defendant ICC are parties to a management agreement, dated April 17, 2012 (the "**Management Agreement**"), pursuant to which ICC provides property management services for MTCC 933.
8. ICC has a number of employees who provide services to MTCC 933 pursuant to the Management Agreement, including "back office" accounting and support staff and an on-site property manager, who is an ICC employee dedicated to MTCC 933 on a full-time basis.
9. From on or about September 2012 until December 2014, the defendant Musso was the on-site property manager employed by ICC to work at MTCC 933's premises.
10. Under the terms of the Management Agreement, portions of which are excerpted below, ICC and Musso were required to competently manage MTCC 933's finances, physical premises, employees, and external contracts.

11. In December 2014, MTCC 933 discovered that Musso had sought and received reimbursement for various personal expenditures at Moores Clothing in Toronto (the Moores expenditures are described in greater detail below). Approximately three weeks later, Musso was terminated as MTCC 933's on-site property manager. ICC also terminated Musso's employment.
12. MTCC 933 subsequently began an internal review of all of its expenditures during Musso's tenure as property manager. This review uncovered numerous payments made by MTCC 933, at the direction of Musso, that were either: a.) for Musso's personal benefit; or, b.) payments to third party contractors that resulted from Musso's and ICC's negligent or fraudulent failure to competently manage MTCC 933's affairs, as required by the Management Agreement, all of which are more fully pleaded below.

a.) MTCC 933 Payments Arranged by Musso for his Personal Benefit

13. MTCC 933 has uncovered dozens of purchases made by Musso, for which he sought and received reimbursement from MTCC 933, which were exclusively for Musso's personal benefit. These include household items; food; liquor; electronic equipment such as head phones, iPhone case, iPhone armband, and USB keys; dry cleaning bills; shirts; suits; stainless steel coffee mugs and coffee supplies; ink toner (for printers not found on MTCC 933 property); printers not found on MTCC 933 property; toothpaste; dishwashing liquid; Lindor chocolates; a Valentine's Day card; watch batteries; water filters (the on-site water filter is maintained by Canadian Springs and the water filter in question, like many of the items, was purchased on Oakville, Ontario, where Musso resides); a portable Blue-ray optical drive burner (not required by MTCC 933 and not on

site); software subscriptions not required by MTCC 933; bed sheets, face cloths, hand towels bath towels, blankets, duvet covers, sterling silverware and oven baking sheets (all purchased from Bed, Bath and Beyond in Oakville and purportedly for MTCC 933's guest suite, however, none of the items were received on site); and, legal expenses incurred for the benefit of Musso and paid for using MTCC 933 funds. None of these items are required by MTCC 933 and the current property manager, an employee of ICC has confirmed those items were never delivered to MTCC 933's premises. Many of the purchases mimicked or were duplicative of items that would normally be purchased by MTCC 933's Superintendent.

14. In June to July 2013 Musso claimed reimbursement for over \$4,000 spent at Moores Clothing in Toronto, which was described to the Board as an expenditure for concierge uniforms. The items purchased include cologne, cufflinks, shoes, t-shirts, boxer shorts denim jeans and three suits. Musso subsequently admitted that the items were for his personal benefit but claimed that they were paid using an available credit to MTCC 933, which would result in no net costs to MTCC 933. Moores has confirmed, however, that any credit that was available would have been applied to the original invoices paid by MTCC 933. Musso's story in respect of the Moores purchases is not credible, and his fabrication exacerbated MTCC 933's losses, as pleaded in greater detail below.
15. Many of these purchases were made using either Musso's personal credit card or the credit card belonging to Musso's wife, Reshad Nazeer. In other cases they were purchased following unusually large cash advances, sometimes as high as \$3,000 or more, to Musso.

16. In some cases the payments were made to Musso, in a lump sum and in advance of expenditures being incurred. For example, on December 5, 2012, Musso submitted a cheque requisition for \$3,000. The requisition states "*Purchasing of food, liquor and party decorations for Holiday Party on December 10th*". Pursuant to this requisition, a cheque was made out to Musso in the amount of \$3,000. The receipts that were later attached to this requisition, however, a.) do not total \$3,000; b.) are in many cases for items, such as electronic goods and purported Board committee expenses that were either not for the described purpose of the requisition or not required by MTCC 933.
17. Musso also caused MTCC 933 to pay third party contractors for work that had no benefit to MTCC 933 and was in reality for Musso's benefit. This includes over \$9,000 paid to law firm Weir Foulds LLP. All or a portion of the work performed by Weir Foulds appears to be for work that is unrelated to MTCC 933 business. Rather, that work appears to be for the benefit of Musso. Weir Foulds lawyers represented Musso in a small claims court action in which Musso was the defendant and which is unrelated to MTCC 933. Musso arranged for MTCC 933 to pay these expenses despite the fact they benefitted him personally and with no benefit to MTCC 933.
18. The total value of these personal items identified thus far for which Musso was reimbursed using MTCC 933 funds is over \$100,000. MTCC 933 continues to investigate the matter. Full particulars of MTCC 933's losses in this regard will be provided prior to trial.

b.) Negligent or Fraudulent Payments to Third Party Contractors

19. In addition to payments to Musso directly for personal items not related to the operation of MTCC 933, Musso also fraudulently or negligently retained numerous contractors on behalf of MTCC 933 for work that was either never performed or could have been performed by MTCC 933's in-house Superintendent. These include payments to:
- (a) *Aldo Property Maintenance Inc.:* over \$20,000 was paid to this contractor between 2013 and 2014 for work that was either not required or could have been completed by MTCC 933's in-house Superintendent.
 - (b) *AMRE Supply Co. Ltd.:* over \$5,000 paid to this company in 2013 and 2014 for work or materials that were either not required or never provided to MTCC 933.
 - (c) *Firenza Plumbing & Heating Ltd.:* between 2013 and 2014, over \$2,300 paid to this contractor for work that was either duplicative or should have been charged back the owner of the unit in which the work was done.
 - (d) *ASG Security Group Ltd.:* approximately \$3,354 in invoices paid for work that was already paid under duplicate invoices or not done, or not required by MTCC 933.
 - (e) *Rainbow Mechanical Services Ltd.:* over \$41,113 in invoices paid for work that was already paid under duplicate invoices or not done, or not required by MTCC 933.
 - (f) *Sureway International Inc.:* over \$6,800 paid to this company in 2014 purportedly for "LED lights" and "electrical supplies". MTCC 933 does not use one one of

the types of bulbs described on the invoices. Furthermore, the Superintendent orders bulbs from a different supplier or buys locally, as needed, at a cost of \$7.95 per bulb. The Superintendent normally purchases approximately 24-36 bulbs per year, for a total average annual cost of approximately \$286, well below the amount paid to this company. Furthermore, there are no large supply of excess bulbs on site.

20. In some cases, the work was performed by the contractor but Musso negligently failed to obtain reimbursement for MTCC 933. In particular, repairs were done to units and never charged back to owners in accordance with MTCC 933's Declaration or as permitted by the *Condominium Act, 1998* (the "Act"). Under the terms of the Management Agreement, ICC and Musso are required to take appropriate action to enforce the Act, MTCC 933's Declaration, By-Laws and Rules. In many cases, where an expenditure is made for work inside a unit (as opposed to the common elements), MTCC 933 may seek reimbursement from the owner for the work. Musso and ICC failed to do so.
21. In February 2012, water escaped from a MTCC 933 unit, causing damage to other units which required the occupants to temporarily vacate their units. Musso submitted various cheque requisitions to be reimbursed for credit card payments he had made to arrange for these residents to be accommodated in rental suites owned by Minto. The cheque requisitions state that the amount is to be "*claimed against insurance.*" The expenses were not covered by MTCC 933's insurance policy, not charged back to the owner, and not authorized by the Board as an MTCC 933 expense. In some cases the amount of the cheque requisition (to reimburse Musso) exceeded the amount on the invoice from Minto.

In one case two cheque requisitions were made for the same Minto invoice resulting in an extra payment to Musso in the amount of \$1,305.

22. MTCC 933 incurred other unnecessary or duplicative third-party contractor costs as a result of Musso and ICC's negligence. They include:

i.) *Third Party Cleaning Contractors Used Without Board Authority and Without Justification*

23. In 2012, Musso arranged for weekend cleaning contractors, who were MTCC 933 employees, reassigned to weekday posts. No Board authority was obtained for this decision. Re-assigning the MTCC 933 employees created a vacancy on the weekend. Between 2012 and 2014 Musso arranged for three different third-party cleaning contractors, Whiterose Janitorial Services Ltd., Ashbury Building Services Inc. and Infinity Customized Services- to perform work - at a cost of over \$50,000 to MTCC 933- that had up until then been performed by MTCC 933 staff.

24. Many of the invoices paid to the third party contractors were duplicates of each other and were for work that was not performed.

25. Musso caused MTCC 933 to incur these unnecessary expenses for third-party contractors as the result of his deliberate misinformation to the Board of Directors and unauthorized manipulation of work schedules of the Corporation's existing full-time employees.

ii.) *Change Order to Diesel System Upgrade*

26. In or around August 2012, MTCC 933 entered into a contract with Marnoch Electrical Services Inc. ("**Marnoch**") for an upgrade to MTCC 933's diesel fuel system. The total

contract price was \$72,290 plus HST. The work was completed in or around August 2012.

27. In or around February 2013, Musso, without Board approval, signed a "Change Order" in the amount of \$33,102, plus HST. The Management Agreement, paragraph 8.1(f)(iii), requires that Musso obtain approval of the Corporation, by way of majority resolution of the Board, prior to authorizing expenditure of any amount over \$2,000. (The Management Agreement allows for an exception in the case of an urgent or emergency situation only, but Musso did not report any such emergency to the Board.)
28. The additional expense was described as a "Change Order" to the original Marnoch contract despite the fact that the original contract was completed- and fully paid- approximately six months earlier.
29. The Change Order, prepared by M&E Engineering Ltd. ("M&E") describes the work as follows:

The Mechanical Contractor [Marnoch] shall retain JCI to complete the control work for the diesel lift pump as per sequence of operation indicated on the drawing. Including running conduit, and wires from diesel room at p3 and generator room in the penthouse to the BAS system.

30. The 'JCI' referred to in the Change Order is Johnson Controls Inc. The 'BAS' is a *proprietary* Building Automation System originally installed by Johnson Controls Inc. in 2006. Because the system is proprietary, only Johnson Controls Inc. could do the required work on the system, which is what is contemplated in the Change Order.
31. Despite the fact that the Change Order prepared by M&E contemplates the work being done by JCI, both Marnoch and JCI were paid for the work. In or around May 2013,

MTCC 933 paid Johnson Controls Inc. directly for the work. The total paid to Johnson Controls Inc. was \$45,002.

32. Marnoch was also then paid the full \$37,405.27 (being \$33,102 plus HST) for the Change Order. The payments were requisitioned by Musso and made to Marnoch in two installments dated August 19, 2013 and September 4, 2014, respectively. The September 2014 payment occurred more than two years after the work on the initial Marnoch contract was completed and eighteen months after the Change Order was signed.

iii.) Payroll Mismanagement

33. In 2013 and 2014, ICC and/or Musso made various errors in processing employee payroll records, which resulted in over-payments to MTCC 933 employees in the amount of approximately \$24,000. The errors included paying staff for statutory holiday pay already included in their regular weekly pay (for example if an employee does not work on a statutory holiday, the employee gets his/her regular pay for that day; the employee would only receive additional holiday pay if he/she worked on the holiday), or failing to record vacation days taken, which resulted in payments to employees for vacation pay after having already been paid for the time off.

iv.) Over-Payment to ICC

34. The Management Agreement between MTCC 933 provides a fixed cost to MTCC 933 which includes provision to MTCC 933 with a full-time property manager and a part-time administrative assistant. In December 2012 ICC billed MTCC 933 for an addition to the Management Agreement that was described on the cheque requisition as "*for supply of full time Administrator for November and December 2012. Addition to Management*

Contract." The amount billed, \$10,667.20, however, represents the total cost for a full-time administrative assistant, half of which is already included in MTCC 933's regular payments to ICC. Therefore, MTCC 933 was over-billed by \$5,573.84.

v.) *Residential Corridor Refurbishment Project*

35. In or around February 2013, the Corporation contracted with Lidio Romanin Construction Company Limited o/a LAR Management ("**LAR**") to complete various renovations to MTCC 933's corridors on residential levels. The work included, among other things, replacing hallway carpets, wall coverings and baseboards on each of MTCC 933's thirty-one residential floors, replacing hardware on unit doors, and other related work to the elevator lobby areas (the "**Corridor Refurbishment**").
36. In or around August 2013, MTCC 933 entered into a Design-Build Stipulated Price Contract with LAR (the "**Corridor Refurbishment Contract**") for the Corridor Refurbishment. The Corridor Refurbishment Contract is dated as at July 25, 2015 but was executed on behalf of MTCC 933 in or around August 2013.
37. On August 1, 2013, Musso represented in an email to MTCC 933's Board of Directors that the "total" price of the LAR contract was \$2,128,999 (including HST), which, he said, was "within the scope and budget" of the amount budgeted for the Corridor Refurbishment in MTCC 933's Reserve Fund (\$2,167,578).
38. In fact, total amount paid by MTCC 933 was well in excess of the stated amount. In particular, MTCC 933 paid the following additional amounts:

- (a) \$16,950 to LAR in February 2013, as a "retainer" for the design-build project. The invoice for this item, dated February 14, 2013, states that it is "*Progress Draw No. 1, Retainer Fee, towards accepted LAR Design Build Proposal, dated February 7, 2013*". This retainer was not credited as a progress payment towards the Corridor Refurbishment Contract.
 - (b) An additional payment of \$47,460 (inclusive of HST) to Clinton Design Inc. for "*Design/Conceptual Services*"; the proposal and eventual contract with LAR states that LAR is responsible for hiring a designer.
39. Musso as property manager responsible for the administration of the LAR contract on behalf of MTCC 933, knew or ought to have known that these payments to LAR should have been credited against the eventual total paid by MTCC 933.
40. Furthermore, Musso and ICC failed to properly supervise the work performed by LAR, with the result that numerous deficiencies in LAR's workmanship and failure to complete the scope of work were not identified to the Board.

Additional Costs Incurred as a Result of Musso's Conduct

41. MTCC 933 has incurred significant expenses resulting from the financial anomalies pleaded above. These include legal and other professional fees, increased audit fees resulting from the various expense reports identified and brought to the auditor's attention (which resulted in a qualified audit opinion for the 2014/15 fiscal year), and IT consultants retained as a result of Musso's failure to cooperate with MTCC 933's request for documentation. Full particulars of these expenses will be provided prior to trial.

42. In many cases, these costs were incurred or exacerbated by Musso's conduct in response to the allegations. In December 2013, Musso advised the Board that an email he sent regarding one of the expenditures (for suits and other items purchased at Moores Clothing) was illegally intercepted by a third party. Musso concealed the fact that he had blind copied this email, claiming that it could only have come into the third party's hands through illegal interception. As a result of this claim, MTCC 933 paid in or around \$14,972.50 to an IT company, Cencom Management Information, to investigate the matter.

Contractual Obligations of ICC/Musso

43. The Management Agreement between ICC and MTCC 933 states, in part, as follows:

5.2 The Manager [ICC] represents that it is familiar with the terms of the Act, the Declaration, By-Laws and the Rules of the Corporation, as well as any agreement to which the Corporation is a party.

...

6.1 The Manager shall take appropriate action within its powers to (short of legal proceedings) to enforce the Act, the Declaration, the By-Laws and the Rules in accordance with standing instructions obtained by the Manager from the Board or, if these instructions are inadequate in any particular situation, in accordance with directions sought by the Manager from the president, or, in the latter's absence, the Vice President; and, when directed to do so by the Board, initiate at the expense of the Corporation, proceedings through the Corporation's solicitor.

...

Financial Management

7.1 The Manager shall provide to the Corporation all appropriate financial management services and, without limiting the generality of the foregoing

...

(b) Make timely payment of all accounts properly incurred by or on behalf of the Corporation. This includes drawing necessary cheques for payment of all

expenses incurred by the Corporation and submitting them to the Board with correct accompanying documentation for approval and signature...

...

(d) Actively pursue the collection of unpaid common expense assessments from the Owners with a view to reducing these receivables to the minimum monthly balance and without incurring additional cost...

...

Physical Management

8.1 The Manager shall provide to the Corporation all appropriate physical management services and, without limiting the generality of the foregoing shall:

...

(d) Inventory: Maintain an up-to-date list of all inventory, equipment and chattels forming part of the assets of the Corporation including, without limiting the generality of the foregoing, all furniture, gardening equipment, cleaning equipment and supplies, and office equipment and supplies.

...

(f) Spending Authority and Deficit Financing

...

(iii) the Manager shall not authorize the rendering of any services or purchase of any item estimated to cost in excess of \$2,000 for any one (1) item without first obtaining the Corporation's approval to proceed, by way of resolution of the majority of the Board....If in the Manager's opinion there exists a hazardous situation which could cause personal injury or damage to the Property of the Corporation ...at a time when the Corporation or its representatives cannot be reasonably located for the purpose of giving approval for the work...then the Manager is hereby authorized to proceed with the work as in its discretion it determines to be urgently necessary for the protection and preservation of the Property of the Corporation...The Manager shall in the case of a hazardous situation immediately report to the Board regarding the expenditure.

...

(g): Contract Supervision

(i) Use reasonable diligence to ensure that contracts and agreements between the Corporation and any supplier of materials, goods and/or

services are performed in accordance with their terms; inform the Board and hold back payment to the contractor in the event performance is considered by the Manager to be inadequate or contrary to the agreed terms...

(h) Corporation's Employees

(i) maintain proper payroll records for all of the Corporation's employees and to make all payroll reports and returns required by law and to remit on a timely basis to the governmental authorities all deductions and payments for income tax, employment.

Indemnification

10.1: During and after the termination of this Agreement, the Manager shall indemnify and save the Corporation and all Owners completely free and harmless from any and all damages or injuries to persons or property, claims, actions, obligations, liabilities, costs, expenses and fees incurred during the term of this Agreement arising out of the default by the manager or by the negligence, wilful misconduct, illegal or dishonest act or intentional harm of the Manager or any of its employees and the Manager agrees to provide the Corporation with a Certificate of Insurance prior to the effective date of this contract and thereafter annually as evidence that it is maintaining liability blanket insurance in the amount of at least \$2,000,000 for the purpose of indemnifying the Corporation pursuant to this clause. Such policy shall provide that the insurer will provide the Corporation and all members of the Board with at least thirty (30) days' prior written notice of cancellation or any material changes in the provisions of the insurance policy.

44. ICC and Musso have, through their negligence, fraud, or in breach of their contractual obligations to MTCC 933, caused MTCC 933 to incur significant financial losses, as pleaded above. ICC and Musso are required to indemnify MTCC 933 for its losses.
45. All of Musso's actions, as pleaded herein, took place during the course of Musso's employment with ICC. ICC is vicariously liable for all of Musso's actions.
46. MTCC 933 pleads and relies on the provisions of the Management Agreement, and the *Condominium Act, 1998, S.O. 1998, c. 19.*

47. MTCC 933 asks that this action be tried in Toronto.

December 9, 2015

SHIBLEY RIGHTON LLP
Barristers & Solicitors
700 - 250 University Avenue
Toronto, ON M5H 3E5

John De Vellis (45629V)
john.devellis@shibleyrighton.com
Tel: 416-214-5232
Fax: 416-214-5432

Lawyers for the Plaintiff

**METROPOLITAN TORONTO CONDOMINIUM
CORPORATION NO. 933**
Plaintiff

- and -

ICC PROPERTY MANAGEMENT LTD., et al.

Defendants

Court File No. CV-15-540184

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

SHIBLEY RIGHTON LLP
Barristers & Solicitors
700 - 250 University Avenue
Toronto, ON M5H 3E5

John De Vellis (45629V)
john.devellis@shibleyrighton.com
Tel: 416-214-5232
Fax: 416-214-5432

Lawyers for the Plaintiff, Metropolitan Toronto
Condominium Corporation No. 933

