

DEC 28 2017



No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KIRA-LYNNE FANTOV

PLAINTIFF

AND:

CANADA BREAD COMPANY, LIMITED, GRUPO BIMBO, S.A.B. DE C.V.,
GEORGE WESTON LIMITED, LOBLAW COMPANIES LIMITED,
WESTON FOODS (CANADA) INC., EMPIRE COMPANY LIMITED,
SOBEYS INC., METRO INC., WAL-MART CANADA CORP.
WAL-MART STORES, INC. and GIANT TIGER STORES LIMITED

DEFENDANTS

NOTICE OF CIVIL CLAIM

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

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Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Defined terms

1. The capitalised terms used in this Notice of Civil Claim have the meanings indicated below:
 - (a) “**CA**” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
 - (b) “**Class**” and “**Class Members**” means all persons resident in British Columbia, except for **Excluded Persons**, who purchased Packaged Bread during the Class Period;
 - (c) “**Class Period**” means the period from and after the date the Conspiracy began, being in or around November 2001;
 - (d) “**Conspiracy**” means:
 - (i) before 12 March 2010, the conspiracy, combination, agreement or arrangement between the Defendants to prevent, limit or lessen unduly the manufacture or production of Packaged Bread; to enhance unreasonably the price thereof; to prevent or lessen unduly competition in the production, manufacture, purchase, sale, or supply of Packaged Bread; or otherwise to restrain or injure competition unduly between or among the Defendants;

- (ii) on and after 12 March 2010, the conspiracy, agreement or arrangement between or among the Defendants or some of them to fix, maintain, increase or control the price of Packaged Bread; to allocate sales, territories, customers or markets for the production or supply of Packaged Bread; to fix, maintain, control, prevent, lessen or eliminate the production or supply of Packaged Bread; and
- (iii) at any time during the Class Period the conspiracy, agreement or arrangement among the Defendants to act in contravention of s 45 of the *CA* with:
 - 1. the predominate purpose of causing harm to the Class Members; or
 - 2. the actual or constructive intent and with the natural result of causing harm to the Class Members.
- (e) “*CPA*” means the *Class Proceedings Act*, RSBC 1996, c 50;
- (f) “**Excluded Persons**” means the Defendants and their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; and
- (g) “**Packaged Bread**” means packaged bread products and bread alternatives (including but not limited to bagged breads, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas) for sale at retail;

The parties

- 2. The Plaintiff, Kira-Lynne Fantov, is a resident of Burnaby, British Columbia. She purchased Packaged Bread during the Class Period.
- 3. Canada Bread Company, Limited is an Ontario corporation with its head office in Toronto, Ontario. It is a subsidiary of Grupo Bimbo, S.A.B. de C.V. Canada Bread Company, Limited is a producer of fresh and frozen baked products sold under the brands Dempster’s, Villagio, Vachon, Stonemill and others.

4. Grupo Bimbo, S.A.B. de C.V. is a publicly traded Mexican corporation with its head office in Mexico City, Mexico. It is the parent company of Canada Bread Company, Limited.
5. George Weston Limited is a publicly traded Canadian corporation with its head office in Toronto, Ontario. It is the parent company of Loblaw Companies Limited and Weston Foods (Canada) Inc.
6. Loblaw Companies Limited is a publicly traded Canadian corporation with its head office in Toronto, Ontario. It is a subsidiary of George Weston Limited. Loblaw Companies Limited is a food retailer with over 1,000 grocery stores in Canada across its banners including: Loblaws, Zehrs, Fortinos, Real Canadian Superstore, No Frills and others.
7. Weston Foods (Canada) Inc. is an Ontario corporation with its head office in Toronto, Ontario. It is a subsidiary of George Weston Limited. Weston Foods (Canada) Inc. is a producer of fresh and frozen baked products sold under the brands Weston, Wonder, D'Italiano, Country Harvest and others.
8. Empire Company Limited is a publicly traded Nova Scotia corporation with its head office in Stellarton, Nova Scotia. It is the parent company of Sobeys Inc.
9. Sobeys Inc. is a Nova Scotia corporation with its head office in Stellarton, Nova Scotia. It is a subsidiary of Empire Company Limited. Sobeys Inc. is a food retailer with over 1,500 grocery stores in Canada across its banners including: Sobeys, IGA, Safeway, Foodland, FreshCo and others.

10. Metro Inc. is a publicly traded Quebec corporation with its head office in Montreal, Quebec. Metro Inc. is a food retailer with over 700 grocery stores in Canada across its banners including: Metro, Food Basics, Super C, Marché and others.
11. Wal-Mart Stores, Inc. is a publicly traded Delaware corporation with its head office in Little Rock, Arkansas. It is the parent company of Wal-Mart Canada Corp.
12. Wal-Mart Canada Corp. is a Nova Scotia corporation with its head office in Mississauga, Ontario. It is a subsidiary of Wal-Mart Stores Inc. Wal-Mart Canada Corp. is a retailer with over 400 department stores in Canada.
13. Giant Tiger Stores Limited is an Ontario corporation with its head office in Ottawa, Ontario. Giant Tiger Stores Limited is a discount retailer with over 200 stores in Canada.
14. Various entities and persons who are unknown to the Plaintiff and not named as parties to this proceeding have participated in the Conspiracy and have engaged in acts with the Defendants in furtherance of the Conspiracy.
15. This action has a real and substantial connection with British Columbia because, among other things:
 - (a) The Defendants, except Metro Inc. and Giant Tiger Stores Limited, carry on business in British Columbia;
 - (b) The Conspiracy increased the price of Packaged Bread sold in British Columbia;
and

- (c) Class Members resident in British Columbia purchased Packaged Bread and suffered damage and loss.

Nature of the action

16. Since about November 2001 the Defendants have conspired, agreed or arranged amongst themselves to set the price of Packaged Bread sold in Canada by controlling output, price and other aspects of the manufacture, production, or supply of Packaged Bread. Their conduct caused and is causing loss and damage to individuals in Canada who purchased Packaged Bread.
17. The Defendants' conspiracy, agreement and arrangement were conducted in secret. The details of the Defendants' conspiracy, agreement and arrangement, including the times and places they met in furtherance of their illegal actions are known to the Defendants.
18. The direct and foreseeable result of their illegal actions was – and is – that the Plaintiff and the other Class Members would and will suffer loss and damage. The intent and natural outcome of their illegal actions was – and is – to enrich the Defendants.
19. On December 19, 2017, Loblaw Companies Limited, Weston Foods (Canada) Inc. and George Weston Limited publicly admitted to their involvement in the Conspiracy.

Part 2: RELIEF SOUGHT

1. An order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50;
2. An order appointing the Plaintiff as the representative plaintiff for the class;
3. A declaration that in the part of the Class Period before 12 March 2010 the Defendants conspired, combined, agreed or arranged between or among themselves:
 - (i) to prevent, limit or lessen unduly the manufacture or production of Packaged Bread;
 - (ii) to enhance unreasonably the price of Packaged Bread;
 - (iii) to prevent or lessen unduly competition in the production, manufacture, purchase, sale, or supply of Packaged Bread; and
 - (iv) otherwise to restrain or injure unduly competition between them,in breach of s 45 of the *CA* in force before this date.
4. A declaration that in the part of the Class Period from and after 12 March 2010 the Defendants conspired, agreed or arranged between or among themselves:
 - (i) to fix, maintain, increase or control the price for Packaged Bread sold in Canada;
 - (ii) to allocate sales, territories, customers or markets for the production or supply Packaged Bread sold in Canada; and
 - (iii) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Packaged Bread sold in Canada,in breach of s 45 of the *CA* in force from that date;

5. A declaration that during the Class Period the Defendants together conspired unlawfully to breach s 45 of the *CA*;
6. A declaration that the Defendants caused the Plaintiff and the other Class Members to suffer loss and damage by their participation in the conspiracy to breach s 45 of the *CA*, by their breach of s 45 of the *CA*, and by their associated conduct as described herein;
7. A declaration that the Defendants are liable under the doctrine of waiver of tort to account to and to disgorge to the Plaintiff and the other Class Members the monetary benefits the Defendants obtained from the conduct described herein;
8. A declaration that the Defendants hold the profits they or any of them or their nominees received for Packaged Bread in breach of s 45 of the *CA* and as part of the Conspiracy;
9. A declaration that the Defendants have been unjustly enriched by the profits or any benefits they obtained during the Class Period from the sale of Packaged Bread in breach of s 45 of the *CA* and as part of the Conspiracy;
10. Damages in the aggregate in the sum of \$100 million or such additional or other sum as this court finds appropriate at the trial of the common issues;
11. In the further alternative, an order requiring the Defendants to account to the Plaintiff and the other Class Members for the monetary benefits they obtained during the Class Period from their participation in the conduct described herein and an order requiring the Defendants to pay to or to disgorge to the Plaintiff and the other Class Members these benefits;

12. An order requiring the preservation of all records of meetings and communications during the Class Period relating to the Conspiracy;
13. Punitive damages in the amount of \$10 million or such other sum as this Court finds appropriate at the trial of the common issues;
14. Pre-judgment interest, compounded, in an amount equal to the internal rate of return that the Defendants earned on capital or, alternatively, pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
15. Post judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
16. 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;
17. An order for the aggregate assessment of monetary relief and distribution thereof to the Plaintiff and the Class Members;
18. Costs of this action on a substantial indemnity basis plus applicable taxes, plus pursuant to s 24 of the *CPA*, the costs of notices and of administering the plan of distribution of the recovery in this action; and
19. Such further and other relief as this Court may deem just.

Part 3: LEGAL BASIS

Section 45 of the CA

20. The Defendants are legally independent of one another and compete to sell Packaged Bread to persons in Canada.
21. Before 12 March 2010, the Defendants conspired, combined, agreed or arranged, whether expressly, tacitly or by signalling, to prevent, limit or lessen unduly the manufacture or production of Packaged Bread; to enhance unreasonably the price thereof; to prevent or lessen unduly competition in the production, manufacture, purchase, sale, or supply of Packaged Bread; or otherwise to restrain or injure competition unduly between or among the Defendants.
22. On and after 12 March 2010, the Defendants conspired, agreed or arranged between or among them or some of them, whether expressly, tacitly or by signalling, to fix, maintain, increase or control the price of Packaged Bread; to allocate sales, territories, customers or markets for the production or supply of Packaged Bread; to fix, maintain, control, prevent, lessen or eliminate the production or supply of Packaged Bread.
23. At all times during the Class Period the Defendants conspired, agreed or arranged, whether expressly, tacitly or by signalling, to act in contravention of s 45 of the *CA* with the predominate purpose of causing harm to the Class Members and/or the actual or constructive intent and with the natural result of causing harm to the Class Members.

Common law conspiracy

24. The Defendants are legally independent of one another and compete to sell Packaged Bread to persons in Canada.
25. During the Class Period the Defendants and their co-conspirators, whether expressly, tacitly or by signalling, entered into agreements with each other to use unlawful means, consisting of contravening s 45 of the *CA*, causing loss and damage to the Plaintiff and the other Class Members.
26. The Conspiracy was directed towards and the predominate purpose was to cause harm to the Plaintiff and the other Class Members.
27. Furthermore, and alternatively, the actual or constructive intent and the natural result of the Conspiracy was to cause harm to the Plaintiff and the other Class Members.

Unjust enrichment

28. During the Class Period, the Defendants were unjustly enriched by retaining a portion of the profits they received from the sales of Packaged Bread as part of the Conspiracy.
29. The Defendants as part of the Conspiracy caused the Plaintiff and the Class Members to pay money for Packaged Bread for which they should have paid less than they did.
30. As a result, the Defendants were enriched by the overpayment.

31. The Plaintiffs and Class Members suffered a deprivation corresponding to the Defendants' enrichment.
32. There is not a juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendants' unjust enrichment.

Constructive trust

33. During the Class Period, the Defendants participated in the Conspiracy.
34. As a consequence of their participation in the Conspiracy, the Defendants or their nominees on their behalf directly or indirectly received income from the sales of Packaged Bread to the Plaintiff and the other Class Members.
35. During the Class Period, the Defendants benefited from part of this income.
36. It is unjust and wrong for the Defendants to receive income from their participation in the Conspiracy.
37. Accordingly, the Plaintiff and the other Class Members are entitled to a proprietary remedy from the Defendants.
38. For these reasons, the Defendants received and held the income they received from sales of Packaged Bread to the Plaintiff and the other Class Members during the Class Period on a constructive trust in favour of the Plaintiff and the other Class Members and the

Defendants are required to account to the Plaintiff and the other Class Members for income received during the Class Period.

Waiver of tort

39. In the alternative, the Plaintiff pleads and relies upon waiver of tort.
40. During the Class Period, the Defendants participated in the Conspiracy, which is a tortious conspiracy.
41. The Defendants benefited economically from their participation in the Conspiracy.
42. The Defendants are therefore liable to account to and to disgorge to the Plaintiff and the other Class Members the economic benefits the Defendants obtained during the Class Period from their participation in the Conspiracy.

Damages

43. The Plaintiff and the other Class Members have suffered loss and damage caused by the wrongful and unlawful conduct of the Defendants.
44. In the further alternative, during the Class Period the Plaintiff and the other Class Members suffered loss and damage caused by the wrongful and unlawful conduct of the Defendants which resulted in the unjust enrichment of the Defendants.

Punitive Damages

45. The Defendants' conduct, as particularized above, was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in complete disregard of the rights of the Class Members, and as such, renders the Defendants liable to pay punitive damages.

46. The Plaintiff pleads and relies on the *CA*, *CPA* and the *Court Order Interest Act*, RSBC 1996, c. 79.

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MICHAEL VATHILAKIS (LSUC#: 45837D)

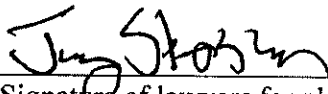
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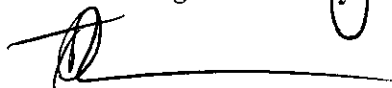
Place of trial: Vancouver, British Columbia

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Date: December 28, 2017



Signature of lawyers for plaintiff
David Wingfield and Jay Strosberg


Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.