

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of the
document digitally filed on Feb 22, 2023

Clerk's Stamp

COURT FILE NUMBER 1001-15771

COURT KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

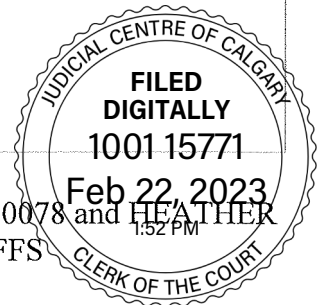
PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and HEATHER
MAZUR AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA, NATIONAL HOME WARRANTY PROGRAMS
LTD. , DAVID T. SYMONS ARCHITECT LTD., ROBERT
SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS
ARCHITECT LTD. CARRYING ON BUSINESS AS S2
ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE,
DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.,
PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND
R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY and LENBETH
WEEPING TILE CALGARY

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T.
SYMONS ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT LTD.
CARRYING ON BUSINESS AS S2 ARCHITECTURE
PARTNERSHIP, S2 ARCHITECTURE, DURWEST
CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD., R.K.G.
DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD.
CARRYING ON BUSINESS AS LENBETH WEEPING TILE
CALGARY and LENBETH WEEPING TILE CALGARY

**BROUGHT PURSUANT TO THE
CLASS PROCEEDINGS ACT, SA 2003, c C-16.5**

DOCUMENT **ORDER APPROVING SETTLEMENT AND DISTRIBUTION**



ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTIES FILING THIS
DOCUMENT

PEACOCK LINDER HALT & MACK LLP
Suite 4050, 400 – 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: Mylène Tiessen
Telephone: (403) 296-2280
Fax: (403) 296-2299
File: 4829

DATE ON WHICH ORDER WAS PRONOUNCED: February 22, 2023
NAME OF JUSTICE WHO MADE THIS ORDER: Justice G.A. Campbell
LOCATION OF HEARING: Calgary, Alberta

UPON THE JOINT APPLICATION of the Plaintiffs, the Defendants and the Third Party Defendants (the “Parties”) for an order approving the January 25, 2022 settlement between the Parties (the “Settlement”); **AND UPON NOTING** that this action (the “Action”) was certified as a class proceeding pursuant to a Certification Order pronounced November 26, 2012 (the “Certification Order”); **AND UPON THE APPLICATION OF** the Plaintiffs seeking court approval regarding the distribution of proceeds of settlement as set out in the affidavit of Heather Hansen, filed; **AND UPON READING** the affidavit of Heather Hanson sworn October 7, 2022, filed; **AND UPON NOTING** the affidavit of service confirming that notice of the Settlement and the proposed distribution of the proceeds of the settlement have been delivered to the class members; **AND UPON HEARING** from counsel for the Parties;

IT IS HEREBY ORDERED THAT:

1. The Settlement is approved by this Honourable Court and the Court declares that the Settlement is fair, reasonable and in the best interests of the Class.
2. It is further ordered and declared that that Settlement is binding upon each member of the Class (the “Class Members”) and the Class Members do not include those persons who opted out of the class proceeding in accordance with paragraph 9 of the Certification Order.
3. In accordance with the Settlement, and subject to paragraphs 10 and 11 herein, the Action is hereby dismissed as against the Defendants and the Third Party Defendants on a without costs basis and with prejudice, as if the claims had been heard and dismissed on their merits after a full trial of this action.
4. It is further declared that each member of the Class and their heirs, executors, administrators, legal representatives, successors and assigns, fully, finally and forever absolutely releases and discharges the Defendants and any of their predecessors, successors, principals, agents, partners, employees and insurers from and in respect of all claims or potential claims arising out of or in any way relating to the facts and allegations pleaded in the Action.

5. It is ordered that Peacock Linder Halt & Mack LLP (formerly Peacock Linder & Halt LLP) (“Class Counsel”) and Simco Management (Calgary) Inc. (“Simco”) are hereby jointly appointed as Administrator to effect the administration of the Settlement and shall ensure that each Class Member may make a claim to a portion of the settlement funds without any requirement to report to the Court on their distribution of settlement proceeds to the Class. The procedures to be put in place beyond what is set out in this order are to be set by Class Counsel, and all costs of distribution to the Class are to be borne by Simco.
6. This Court declares that this order and the settlement approved pursuant to this order are not based upon any findings or admission of liability or wrongdoing by the Defendants or the Third Party Defendants, and there has been no admission in respect of liability by the Defendants or the Third Party Defendants.
7. This Court approves:
 - (a) the reimbursement to the Plaintiff, Condominium Corporation No. 0610078 (the “Condo Corp”) for disbursements, other charges and applicable GST charged by Class Counsel and paid by the Condo Corp in the sum of \$39,928.47;
 - (b) the payment to Simco in the sum of \$52,250;
 - (c) the payment to Class Counsel in the sum of \$109,725; and
 - (d) the payment of an honorarium in the sum of \$1,000 to Heather Hansen (nee Mazur).
8. The net proceeds of settlement shall be paid, after deduction of the payments set out above, and shall be distributed to the Class Members or their assignees or transferees, as applicable, on a *pro rata* basis, based upon the amount paid by each Class Member who paid levies as a result of the special assessments by the Condo Corp dated January 28, 2010 and May 17, 2020.
9. In the case of a condominium unit owned by more than one Class Member, the *pro rata* payment made pursuant to paragraph 8, will be divided equally between each Class Member being an owner of that condominium unit.
10. This Order shall not dismiss the Third Party Claim filed in this Action by Royal & Sun Alliance Insurance Company of Canada (“RSA”) and National Home Warranty Programs Ltd. (“NHWP”) and their assignees, against Pointe of View Condominiums (Prestwick) Inc. (“POV”) (“the RSA/NHWP Third Party Claim”), nor shall it bar RSA and NHWP ~~NHWP~~ and their assignees from commencing a separate action against POV for contribution and indemnity. The RSA/NHWP Third Party Claim is otherwise dismissed as against all other Third Party Defendants named therein.
11. Notwithstanding that this Order shall not dismiss the RSA/NHWP Third Party Claim as against POV, it shall bar any claims for contribution and indemnity or otherwise against the Condo Corp, Heather Mazur, any Class Member, and the Defendants and Third Party Defendants previously named in this Action, including but not limited to David T. Symons

Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. and Carrying on Business as S2 Architecture Partnership, S2 Architecture, Durwest Construction Systems (Alberta) Ltd., Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. Carrying on Business as Lenbeth weeping Tile Calgary and Lenbeth Weeping Tile Calgary in this action or in any separate action commenced by RSA and NHWP and their assignees for contribution and indemnity.

12. Notice of the Settlement Approval Order to the Class Members shall be given by the Plaintiffs as follows:

- (a) Class members who are currently residents of Prestwick Pointe Condominiums will receive notice by:
 - (i) a notice posted on a bulletin board located in the common area of the residential buildings;
 - (ii) a notice posted on the Simco Management (Calgary) Inc. (“Simco”) communication portal; and
 - (iii) by email if an email address is available or, if not, by regular mail to the most recent address in the records of Condominium Corporation No. 0610078 (the “Condo Corp”);
- (b) Class members who are not currently owners and who provided an email address or a forwarding address will receive notice by way of either email, if an email address is available, or regular mail to the address provided to the Condo Corp; and
- (c) Class members who are not currently owners and where no email or forwarding address was provided will receive notice by posting in the Calgary Herald and Edmonton Journal on one Saturday.

13. The notice:

- (i) Pursuant to paragraphs 12(a) and (b) above shall be given in substantially the form set out at Schedule “A1” to this Order; and
- (ii) Pursuant to paragraph 12(c) above shall be given in substantially the form set out at Schedule “A2” to this Order.
- (b) Notice shall be distributed, posted or mailed in accordance with this order by no later than March 13, 2023.
- (c) Costs of giving notice by regular mail and by posting in the newspaper shall be borne by Simco.

14. The procedure for distribution of the net settlement proceeds to the Class Members will be as follows:

- (a) Class Members who are current Prestwick Pointe Condominium unit owners, will not need to do anything to receive compensation and Simco will provide payment to these class members by no later than April 7, 2023;
 - (b) Class Members who are former Prestwick Pointe Condominium unit owners (“former unit owners”) will need to complete a claim administration form in order to receive compensation in the form attached as Schedule “B” to this Order;
 - (c) Former unit owners will have six months from the date of service of the filed Settlement Approval Order to submit a completed claim administration form;
 - (d) Any amounts not claimed by the six-month deadline provided for above will be paid to the Condo Corp, deposited into the Condo Corp’s reserve fund and utilized in accordance with the Condo Corp’s authority with respect to such funds.
15. This Court retains jurisdiction to consider any further appropriate applications concerning the administration of the settlement.
16. There shall be no costs payable to any party in connection with this application.



The Honourable Justice G. A. Campbell
Justice of the Court of King’s Bench of Alberta

SCHEDULE "A1"

**NOTICE OF SETTLEMENT APPROVAL IN THE
POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC. PARKADE
CLASS ACTION**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

TO CLASS MEMBERS:

You are a class member if:

- (a) You purchased a condominium unit in Condominium Plan No. 0610078 ("0610078") from Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View"), you paid levies as a result of the special assessments by Condominium Corporation No. 0610078 (the "Corporation") dated January 28, 2010 and May 17, 2010 (the "Special Assessments") and you have not opted-out of the class action; or
- (b) You purchased a condominium unit in 0610078 from other than Pointe of View, you paid levies as a result of the Special Assessments and you have not opted-out of the class action;

The Alberta Court of Queen's Bench has approved a settlement in the class action commenced to recover the costs associated with repairs undertaken, starting in 2011, at Prestwick Pointe Condominiums located at 10 Prestwick Bay S.E., Calgary ("Prestwick Pointe") to repair certain parkade and drainage system problems. The costs of these repairs were paid for from contributions from unit owners as a result of two special assessments. An action was commenced to recover these costs. The action was certified as a class action on November 26, 2012.

To obtain a copy of the order approving the settlement please visit www.plhlaw.ca/class-actions. Or contact class counsel using the contact information set out in section 3, below – *Contacting Class Counsel*

1. Summary of the Settlement Approved by the Court

The plaintiffs, the defendants and the third party defendants agreed to settle the class action for a total all-inclusive payment of \$1,045,000. In exchange for the \$1,045,000 payment the defendants and third party defendants have received a full release of all claims by the class members who did not opt out.

Pursuant to the Court's approval deductions for legal fees, disbursements, other expenses and legal fees will be paid from the settlement funds. The net settlement funds will be distributed to the class members on a *pro rata* basis according to the amount each class member paid as a result of the special assessments.

2. What you need to do to claim your share of the net settlement funds

If you are a class member who is a current Prestwick Pointe unit owner, you will not need to do anything to receive compensation. Class members who are former Prestwick Pointe unit owners will need to

complete and submit the attached claim administration form to Simco Management (Calgary) Inc. at the address provided below by no later than September 15, 2023, in order to receive compensation. Any claim submitted after that date will be rejected. The claim administration form is necessary to ensure that the claims administrator has, among other things, the former unit owner's current address.

Simco Management (Calgary) Inc.
2478 – 91st Street SE
Calgary, AB T2C 5H3
Telephone: 403-234-0166
Facsimile: 403-234-0172
Email: povclassaction@simcomgt.com
Attention: Verna Penner

3. Contacting Class Counsel

Peacock Linder Halt & Mack LLP are class counsel and can be reached at:

4050, 400 - 3rd Ave. S.W.
Calgary, AB T2P 4H2
Telephone: 403-296-2291
Fax: 403-296-2299

Lawyer: Mylène Tiessen
Email: mtiessen@plhlaw.ca

4. If you have questions

For more information, please visit www.plhlaw.ca/class-actions. If you have questions that are not answered online, please contact class counsel or Simco Management (Calgary) Inc. at the email address and number listed above.

The court offices are unable to answer any questions about the matters in this notice.

You are entitled, but not obliged, to hire your own lawyer to provide you with advice or assistance regarding your individual claim. If you do so, you will be responsible for paying that lawyer's legal fees.

This notice was approved by order of the Court of King's Bench of Alberta.

SCHEDULE "A2"

**NOTICE OF SETTLEMENT APPROVAL
ORDER OF POINTE OF VIEW
CONDOMINIUMS (PRESTWICK) INC.
PARKADE CLASS ACTION LAWSUIT**

On November 26, 2012, the Alberta Court of Queen's Bench certified a class action involving Pointe of View Condominiums located at 10 Prestwick Bay S.E., Calgary, with respect to various problems involving the parkade and drainage system. The action has been settled and the settlement was approved by the Court on February 22, 2023. To determine if you are a member of the class, to obtain a copy of the settlement approval order or to make a claim please visit www.plhlaw.ca/class-actions or contact class counsel, Peacock Linder Halt & Mack LLP at 403-296-2280.

SCHEDULE "B"

CLASS ACTION CLAIM FORM

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.
PARKADE CLASS ACTION**

INSTRUCTIONS:

1. Please complete this form if you are a class member and a former Prestwick Pointe unit owner.
2. Please ensure you complete all sections of the Claim Form that apply to you.
3. The form may be completed, signed and submitted electronically; or by printing the form, completing it (please write clearly and legibly) and submitting it to the claims administrator:

Simco Management (Calgary) Inc.

2478 – 91st Street SE

Calgary, AB T2C 5H3

Facsimile: 403-234-0172

Email: povclassaction@simcomgt.com

Attention: Verna Penner

CLAIMANT INFORMATION:

NAME (FIRST AND LAST): _____

PRESTWICK POINTE UNIT(S) YOU PREVIOUSLY OWNED (unit number): _____

MAILING ADDRESS (Unit Number/Street/P.O. Box/City/Province/Country/Postal Code):

EMAIL ADDRESS: _____

TELEPHONE NUMBER: _____

WERE YOU THE SOLE OWNER OF THE PRESTWICK POINTE UNIT(S) AT THE TIME (check one):

YES NO

IF NO, PROVIDE THE NAME, ADDRESS, EMAIL ADDRESS AND TELEPHONE NUMBER OF THE OTHER OWNER(S):

NAME (FIRST AND LAST): _____

MAILING ADDRESS (Unit Number/Street/P.O. Box/City/Province/Country/Postal Code):

EMAIL ADDRESS: _____

TELEPHONE NUMBER: _____

HAVE YOU TRANSFERRED YOUR INTEREST IN THE ACTION (check one)?

NO YES

IF YES, PLEASE EXPLAIN: _____

IF YES, PLEASE ALSO PROVIDE A COPY OF ANY SUPPORTING DOCUMENTATION WHEN SUBMITTING THIS FORM.

SIGNATURE: _____ DATE: _____

REMINDER CHECKLIST:

1. Please complete and sign the claim form where indicated.
2. Attach only a copy of any supporting documentation as these documents will not be returned to you.
3. Keep a copy of the claim form for your records.
4. The claims administrator will acknowledge receipt of your Claim Form by mail or email within 20 days. Your claim is not deemed submitted until you receive an acknowledgement from Simco Management (Calgary) Inc. If you do not receive an acknowledgement within 20 days, please call Simco Management (Calgary) Inc. at 403-234-0166.
5. If you move after submitting this Claim Form please notify Simco Management (Calgary) Inc. of the change in your address, otherwise you may not receive additional notices or payment.
6. **CLAIM FORMS SUBMITTED AFTER SEPTEMBER 15, 2023 WILL BE REJECTED.**