

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE BENJAMIN T. GLUSTEIN)

WEDNESDAY, THE 21ST ^{SL}
DAY OF ~~JULY~~ ^{OCTOBER} 2020 ^{SL}

B E T W E E N :

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

GLOBAL LEARNING GROUP INC.,
GLOBAL LEARNING TRUST SERVICES INC. as TRUSTEE OF GLOBAL LEARNING
TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION.,
ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN
BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP,
CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, and EVANS &
EVANS INC., and GRAHAM TURNER, ROBERT KEPES and MORRIS & MORRIS LLP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Motion for Certification as against Graham Turner)

THIS MOTION, made by the plaintiffs, for an order certifying this action as a class proceeding as against Graham Turner, was read this day at the courthouse at 130 Queen Street West, Toronto, Ontario.

ON READING the plaintiffs' notice of motion and the affidavit of Margaret L. Waddell, sworn [DATE], 2020,

AND ON BEING ADVISED of the consent of Graham Turner, and on being advised that no other defendant opposes the relief sought,

1. **THIS COURT ORDERS** that this action is certified as a class proceeding under ss. 2 and 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), as against Graham Turner (“Turner”).
2. **THIS COURT ORDERS** that the class is described as:

All persons who participated in the Global Learning Gifting Initiative Charitable Donation program (“the Gift Program”), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lopus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak (the “Class”).
3. **THIS COURT ORDERS** that Lynn Wintercorn, Peter Newman, Emily Flammini and Alex Kepic are appointed as the representative plaintiffs.
4. **THIS COURT DECLARES** the nature of the claims asserted on behalf of the Class against Turner are negligence, negligent misrepresentation, knowing receipt, and unjust enrichment.
5. **THIS COURT DECLARES** that the relief sought by the Class as against Turner is: (a) general damages and special damages, (b) punitive, aggravated and exemplary damages, and (c) declarations.

6. **THIS COURT ORDERS** that the common issues for the Class as against Turner are:

General

- (1) Is the release in Direction Two of the Directions to Escrowagent Inc. (“Escrowagent”) enforceable?
- (2) Is the release in the GLGI Acknowledgment signed by Class members enforceable?
- (3) Ought the class members reasonably to have known on or before March 16, 2014, or September 28, 2015, that they suffered a loss that was caused or contributed to by Turner?

Negligence

- (4) Did Turner owe a duty of care to members of the Class with respect to the claim in negligence?
- (5) If Turner owed a duty of care to members of the Class with respect to the claim in negligence, what was the applicable standard of care for Turner?
- (6) If Turner owed a duty of care to members of the Class with respect to the claim in negligence, did Turner breach the applicable standard of care? If so, how?

Negligent misrepresentation

- (7) Did the written documentation describing the nature of the Gift Program, and statements concerning Canada Revenue Agency’s reviews of, or Tax Court of Canada test cases regarding, the Gift Program, which were disseminated by GLGI to its sales persons/distributors or participants in the Gift Program, and posted on its website (the “promotional materials”) contain material misrepresentations or

omissions of material facts regarding the Gift Program? If so, what were the material misrepresentations, and when were the misrepresentations made?

- (8) Did Turner prepare some or all of the promotional materials knowing that they would be provided to Class members, or ought Turner reasonably to have known that the promotional materials would be provided to Class members?
- (9) Did Turner prepare some or all of the documents executed by the Class members in order to participate in the Gift Program (the “transaction documents”) knowing that they would be provided to Class members, or ought Turner reasonably to have known that the transaction documents would be provided to Class members?
- (10) Did the transaction documents contain material misrepresentations or omissions of material facts? If so, what were the material misrepresentations, and when were the misrepresentations made?
- (11) In the circumstances of this case, can the reliance of the Plaintiffs and other Class members on the misrepresentations or material omissions in either the transaction documents or the promotional materials be inferred?
- (12) In the circumstances of this case, was the reliance of the Plaintiffs and other Class members on the misrepresentations or material omissions in either the transaction documents or the promotional materials reasonable?
- (13) If the promotional materials and or the transaction documents contained material misrepresentations or omissions of material facts regarding the Gift Program, did Turner owe a duty of care to the Class members to ensure that the promotional

materials, the transaction documents, or both did not (i) contain material misrepresentations, (ii) did not omit any material information, or (iii) both?

(14) If so, did Turner breach his duty of care owed to the Class? If so, how?

Constructive Trust

(15) Were the funds that the Class members paid to participate in the Gift Program that were paid to specified charities, and which were in turn paid by those charities to GLGI, impressed with a constructive trust in favour of the Class members?

(16) Are the funds that the Class paid to Escrowagent to participate in the Gift Program impressed with a constructive trust in favour of the Class, and if so,

(i) in what amount? and,

(ii) should there be an order tracing those payments to the current holders of those funds?

Knowing Receipt

(17) If the funds referred to in (15) and/or (16) were impressed with a constructive trust in favour of the Class members, did Turner have knowledge of circumstances that would put a reasonable person on inquiry that the funds were impressed with a trust, and did Turner receive any such funds? If so, is Turner liable to make restitution to the Class of the trust funds he received from GLGI and/or Escrowagent, and if so, in what amount?

(18) Is it possible to be liable for knowing receipt with respect to a deemed or constructive trust?

Unjust enrichment

(19) Has Turner been unjustly enriched?

Damages

(20) Does the conduct of Turner justify an award of punitive or aggravated damages?

(21) Can the Class's damages be assessed in whole or in part in the aggregate, and if so, what is the quantum of aggregate damages?

7. **THIS COURT ORDERS** that the trial of any cross-claims shall be heard at the same time as the common issues trial or immediately following the common issues trial, or as the trial judge directs.

8. **THIS COURT ORDERS** that notice to the class of certification of this proceeding as against Turner is dispensed with, pursuant to s. 17(2) of the *CPA*.

9. **THIS COURT ORDERS AND DECLARES** that members of the Class may no longer opt out of this class proceeding, the deadline for doing so having previously expired on March 6, 2020, pursuant to this court's order dated December 17, 2019.

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


The Honourable Justice B. Glustein

LYNN WINTERCORN et al.
Plaintiffs

-and- GLOBAL LEARNING GROUP INC. et al.
Defendants

Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

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