

Court File No. 02-CV-230368 CP

Ontario
SUPERIOR COURT OF JUSTICE



BETWEEN:

NICKIE TOURLOS

Plaintiff

- and -

TIFFANY GATE FOODS CORPORATION

Defendant

Proceedings under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date *May 31, 2002.*

Issued by 

Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: Tiffany Gate Foods Corporation
195 Steinway Blvd.
Toronto, Ontario
M9W 6H6

CLAIM

1. The Plaintiff, on behalf of herself and all class members, claims against the defendant for:

- a) Compensation for negligence for the preparation and distribution of a tainted pasta salad food product in the amount of \$5,000,000.00;
- b) Damages for strict liability in hiring, employing and inadequately supervising its food preparers, handlers, and distributors and, thereby, preparing and distributing a tainted food product and in so doing failing to protect the health and safety of the plaintiff in the amount of \$5,000,000.00;
- c) Punitive damages in the sum of \$1,000,000.00.

2. The Plaintiff currently resides in the City of Toronto in the Province of Ontario and, at all material times, purchased and consumed a tainted pasta salad food product which was prepared and distributed by the Defendant.

3. The Defendant is a corporation incorporated pursuant to the laws of the Province of Ontario and, at all material times, carried on the business of food preparation and distribution from its registered head office located in the City of Toronto in the Province of Ontario.

4. On or about May 14, 2002, the Plaintiff purchased a ready-to-eat Greek pasta salad ("pasta salad") at Valumart, which pasta salad was prepared and distributed by the Defendant.

5. The Plaintiff consumed the pasta salad and on or about May 18, 2002 became very ill. Her illness included vomiting, diarrhea, insomnia, and extreme pain and suffering as a result of which she was hospitalized.

6. As a result of medical tests conducted, the Plaintiff learned that she had been infected by a genus of bacteria known as the Shigella germ.

7. The Plaintiff states and the fact is that she and other class members acquired the Shigella germ as the result of consuming the pasta salad prepared and distributed by the Defendant.

8. The Plaintiff states and the fact is that the Defendant was negligent in the preparation and distribution of the said pasta salad, the particulars of which are as follows:

- (a) it failed to have in place a system of hygiene and cleanliness in the preparation and distribution of its food products;
- (b) it failed to ensure frequent and careful hand washing by its food preparers, handlers, and distributors;
- (c) it failed to ensure that the water and dairy products used in the preparation of the pasta salad did not contain pathogenic bacteria;
- (d) if it had a system of routine hygiene and cleanliness, it failed to ensure that its employees followed same;

- (e) it failed to maintain a consistent and ambient temperature for the ingredients used in the pasta salad and for the pasta salad itself once it was prepared and distributed;
- (f) it failed to ensure that the dairy products used in the preparation of the pasta salad were pasteurized;
- (g) it failed to use chlorinated water or water treated with ozone in the preparation of the pasta salad;
- (h) it failed to test the pasta salad for pathogenic bacteria before same was distributed to consumers;
- (i) it failed to have a system of segregating and storing food products and, if it did, it failed to ensure same was followed and adhered to;
- (j) it failed to test its employees and prospective employees for pathogenic bacteria.

9. The Plaintiff states and the fact is that the Defendant is strictly liable for her damages and the damages of other class members.

10. As a result of the Defendant's negligence and/or abrogation of the strict liability imposed upon it, the Plaintiff and other class members became infected with the Shigella germ. She and other class members became violently ill and continue to be ill. She and other class members suffered and continue to suffer stomach pains, insomnia, dehydration, and weight loss. She and other class members have and continue to suffer psychologically. Her and other class members' enjoyment of life has and will continue to be lessened. She and

other class members have and continue to suffer economic losses and out-of-pocket expenses for, without limiting the generality of the foregoing, prescriptions and other medications.

11. The class members are all persons who were infected by the consumption of the pasta salad prepared and distributed by the Defendant.

12. The Plaintiff states and the fact is that the Defendant has a history of preparing and distributing tainted food products to consumers and, therefore, knew of risks its negligent food preparation and distribution practices posed to the public.

13. The Plaintiff states and pleads that the conduct of the Defendant is reprehensible and such conduct should be deterred and, accordingly, she and other class members are entitled to punitive damages herein.

14. The Plaintiff pleads and relies on the doctrine known as *res ipsa loquitur*.

15. The Plaintiff pleads and relies upon the provisions of the Negligence Act, R.S.O. 1990 c. N-1 and the Class Proceedings Act, 1992 and all relevant amendments thereto.

16. The Plaintiff proposes that the herein action be tried at the City of Toronto.

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May 30, 2002

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Solicitors for the Plaintiff

TOURLOS

- and -

TIFFANY GATE FOODS CORPORATION

PLAINTIFF

DEFENDANT

(Short title of proceeding)

Court File No. 02-

ONTARIO

SUPERIOR COURT OF JUSTICE

(Proceeding Commenced at Toronto)

STATEMENT OF CLAIM

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DARLING
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