

CV-12-456603
Court File No. 00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SCOTT MACKIE

Plaintiff

- and -

**TOSHIBA OF CANADA LTD. AND
TOSHIBA AMERICA INFORMATION SYSTEMS INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

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.

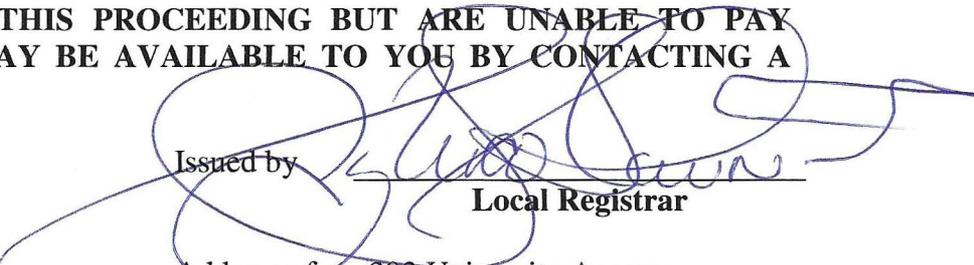
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.



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: June 19, 2012

Issued by


Local Registrar

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

TO: Toshiba of Canada Ltd.
191 McNabb Street
Markham, Ontario
L3R 8H2

Tel: 905-470-3500
Fax: 905-470-3509

AND TO: Toshiba America Information Systems Inc.
9740 Irvine Blvd
Irvine, California
92618-1697

Tel: 949-583-3000
Fax:

CLAIM

1. The plaintiff claims on his own behalf and on behalf of the members of the class of persons described herein (“Class”):

- (a) An order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff of the Class pursuant to the *Class Proceedings Act, 1992* (“CPA”);
- (b) General damages in the amount of \$30,000,000;
- (c) Special damages in the amount of \$5,000,000;
- (d) Punitive damages in the amount of \$2,000,000;
- (e) Pre-judgment interest pursuant to the *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended;
- (f) Costs of the action on a substantial indemnity basis including all applicable taxes thereon and costs of notice of administering the plan of distribution of recovery in the action plus applicable taxes pursuant to CPA s. 26(9); and
- (g) Such further and other relief as this Honourable Court deems just.

Nature of the Action

2. The defendants designed, manufactured, distributed and sold digital light projection (“DLP”) televisions with a lamp unit that was defective. The lamp unit did not have the lifespan

represented by the defendants. The defect caused the DLP televisions to fail prematurely. Class members were required to purchase replacement lamp units and suffered other damages.

Parties

3. The plaintiff is a resident of Mississauga, Ontario.
4. The defendant Toshiba America Information Systems Inc. is a corporation based in the United States of America.
5. The defendant Toshiba of Canada Ltd. is a related company of Toshiba America Information Systems Inc. carrying on business throughout Canada including the Province of Ontario.
6. The defendants (“Toshiba”) are jointly and severally liable for the acts and omissions of each other.
7. Toshiba distributes and sells major electronic household appliances. Toshiba designed, manufactured, marketed and distributed DLP TVs through Canada including the Province of Ontario.

Class

8. The plaintiff brings this class proceeding on behalf of the members of the following Class of which he is a member:

All Canadian residents, excluding residents of the Province of Québec eligible to be class members under Québec law, who own a 2004 or 2005 model year Toshiba Digital Light Projection (“DLP”) television, or any other group to be determined by the Court

Defect

9. The defendants represented to the Class that the average useful service life for a DLP lamp was 8,000 hours in low power mode and 6,000 hours in high bright mode.

10. The defendants' DLP TVs were expensive, selling at retail for between \$2,000 and \$4,000 depending on model. Class members purchased DLP televisions expecting to obtain years of worry-free service.

11. In fact, the useful service life of the DLP TV lamps was significantly less than the 6,000 to 8,000 hours represented by Toshiba. Sometimes the useful life was as low as 300 hours. This caused the DLP TVs to fail and necessitated replacement of the lamps.

12. The warranty for the original lamp unit was one year from original retail purchase date. When the original lamp failed beyond the one year period but prior to the 6,000 to 8,000 hours represented by Toshiba, Class members were required to purchase a replacement lamp at a cost of more than \$200 plus taxes.

13. The replacement lamp warranty was 180 days. When the replacement lamp failed beyond the 180 day period and prior to the 6,000 to 8,000 hours Toshiba represented it would last, the Class members were left to purchase another replacement lamp at an additional cost of more than \$200 plus taxes.

Knowledge

14. Toshiba knew or ought to have known that the DLP lamps would burn out and cease functioning after far fewer than 6,000 to 8,000 hours.

15. In or about March 2006 after receiving complaints, Toshiba instituted as a remediation program a one year extension of warranty on original lamps (not replacement lamps) with respect to certain 2005 model year DLP TVs. During the remediation program, Toshiba assured Class members their DLP televisions “are of the highest quality”.

16. A class action filed in 2007 in the District Court for the Eastern District of New York resulted in a class action settlement that applied only to United States’ residents. The settlement released claims with a claims deadline of June 24, 2009. Class members as defined herein could not benefit from the U.S. settlement.

Plaintiff Purchased a Toshiba DLP

17. On July 14, 2006, the plaintiff purchased a Toshiba 52HM85 DLP at Future Shop on Dundas Street in Mississauga, Ontario for \$1,339.96.

18. The DLP prematurely failed. As a result, the plaintiff purchased a replacement bulb on July 26, 2007 for \$247.38 from Northern Electric Services in Ontario.

Causes of Action

19. Toshiba knew or ought to have known that the DLP lamp units purchased by Class members including by the plaintiff were defective or would fail within the expected life span requiring purchase of replacement units.

20. Toshiba owed a duty of care to the plaintiff and to the Class. Toshiba breached the standard of care expected in the circumstances by failing to design, engineer and manufacture a lamp lasting a reasonable period of time.

21. In particular but without restriction, Toshiba failed to meet the standard of care in that:
- (a) They were negligent in the research, design, engineering, development, testing, manufacturing, distribution, marketing and sale of the DLP;
 - (b) They knew or ought to have known that the DLP design features including the lamp would make it likely to fail prematurely;
 - (c) They failed to adequately ensure the DLP was free from defects prior to selling and distributing it;
 - (d) They knew that when the lamp failed, the DLP owner would be required to purchase one or more replacement lamps and failed to disclose that prior to the Class members' purchase;
 - (e) They failed to conduct sufficient or any pre-market testing to ensure that the lamp was satisfactory;
 - (f) They failed to disclose the design defect prior to the sale;
 - (g) They continued to sell the lamps despite reports the lamps were failing prematurely;
 - (h) They distributed and sold the lamp without conducting tests to ensure it was defect free;

- (i) They knew or ought to have known that the lamp was inherently defective and that the DLP could not properly perform in the manner for which it was intended;
- (j) They failed to take any or sufficient steps to cure the fundamental design defect after they knew of the defect; and
- (k) They failed to warn Class members that the DLP was defective when knowledge of the defects became known to them.

22. As a result of Toshiba's negligence, the plaintiff and Class members suffered damages including out-of-pocket expenses and costs to replace the lamp.

23. The plaintiff and Class members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the CPA.

Jurisdictional Nexus and Applicable Law

24. There is a real and substantial connection between the subject matter of this action and the province of Ontario as Toshiba of Canada Limited has a registered office in Ontario; the defendants distribute and sell the lamps throughout Canada; and the damages of Class members were sustained in Ontario and elsewhere.

25. The plaintiff proposes that the action be tried in the City of Toronto, Ontario.

Date: June 19, 2012

**CONSUMER LAW GROUP
PROFESSIONAL CORPORATION**
70 Carr Street, Suite 10
Toronto, Ontario
M5T 1B7

Jeff Orenstein
LSUC# 59631G
Email: jorenstein@clg.org

Miriam Kalin
LSUC# 51676M
Email: mkalin@clg.org

Tel: (416) 479-4493
Fax: (416) 479-4487

Lawyers for the Plaintiff

CV-12-456603
Court File No. OOC.P.

SCOTT MACKIE
Plaintiff

TOSHIBA OF CANADA LTD. et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED IN TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

**CONSUMER LAW GROUP PROFESSIONAL
CORPORATION**

70 Carr Street, Suite 10
Toronto, Ontario
M5T 1B7

Jeff Orenstein
LSUC# 59631G
jorenstein@clg.org

Miriam Kalin
LSUC# 51676M
mkalin@clg.org

Tel: (416) 479-4493
Fax: (416) 479-4487
Lawyers for the Plaintiff