

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC

(Class Action)
SUPERIOR COURT

200-06-000170-137

Helen E. Raleigh and Steven Raleigh,
[REDACTED]

Petitioners

v.

Maibec Inc., a legal person established pursuant to the Business Corporations Act (Québec), having a principal establishment at 1990, 5^{ième} Rue, Suite 250, Saint-Romuald Québec, G6W 5M6

Defendant

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 and seq. C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN PRACTICE DIVISION, IN AND FOR THE DISTRICT OF QUÉBEC,
PETITIONERS RESPECTFULLY SUBMITS THE FOLLOWING:**

**THE PETITIONERS WISH TO INSTITUTE A CLASS ACTION ON BEHALF THE
CLASS OF PERSONS HEREINAFTER DESCRIBED, NAMELY:**

1. The Petitioners intend to institute a class action on behalf of the persons forming the class hereinafter described and of which the Petitioners is a member ("the Class"), namely:

"All persons, who reside in Canada or the United States, that own or have owned, lease or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased homes and/or buildings that contain or have ever contained Maibec wood shingles and/or siding or that bought Maibec wood shingles and/or siding."

122,00

2013-11-19

Droits de greffe

Gouvernement du Québec
Palais Justice QUÉBEC
01-01-11-19

or such other group definition as may be approved by the Court.

THE PETITIONERS' PERSONAL CLAIM AGAINST THE DEFENDANT IS BASED ON THE FOLLOWING FACTS:

THE PETITIONERS

2. The Petitioners, are residents of Phoenix, Arizona and have suffered damages as a result of the defective shingles and siding sold by the Defendant;
3. In 2005, Maibec shingles and siding were used during the construction of the property located at 214, Midland Avenue, Lewes, Delaware, United States of America, the whole as appears from the construction contract for the said property signed with Trivits Construction LLC, a copy of which is produced herewith as **Exhibit P-1**;
4. In addition to the construction contract mentioned here above, there is unmistakable evidence that the shingles and siding used during the construction of the property in Delaware was in fact Maibec Hampton Shakes, the whole as appears from the receipt from Horstmeier Lumber dated June 15, 2005, a copy of which is produced herewith as **Exhibit P-2**;
5. In 2008, the Petitioners purchased the property located at 214, Midland Avenue, Lewes, Delaware;
6. In July 2012, the Petitioners noticed for the first time that the Maibec siding was curling and opening up;
7. As of November 2012 and beyond, the Petitioners communicated several times with the Defendant hoping to find a solution to the defective siding in their home, unfortunately the Defendant continuously refused to proceed with the necessary repairs, the whole as appears from the chain of emails sent between the parties, a copy of which is produced herewith as **Exhibit P-3**;
8. Considering the Defendant's unjustified refusal, the Petitioners retained the service of Lane Builders LLC, a private contractor, in order to perform the corrective repairs needed to her home at an approximate cost of \$40 000.00;
9. The Petitioners are within their rights to claim the amounts incurred for the repair of her property in addition to damages for inconveniences and punitive damages;

THE DEFENDANT

10. The Defendant is a Québec Corporation with its registered head office and mailing office in Saint-Romuald, the whole as appears from the Statement of

information of the Québec Companies Registry, a copy of which is produced herewith as **Exhibit P-4**;

11. The Defendant is an entity that, among other things, designs, manufactures, markets, and sells a diverse line of natural wood shingles and siding;
12. Other entities related and unrelated to the Defendant (including those retained by the Defendant to, *inter alia*, manufacture natural wood shingles) may have been involved in the design, manufacture, marketing, and/or sale of natural wood shingles and siding. The Defendant is jointly and severally liable for the acts and liability of all of its entities or other entities involved in the design, manufacture, marketing and/or sale of natural wood shingles and siding;

THE FACTS AND THE DEFENDANT'S FAULTS

13. The Defendant designed, manufactured, warranted, advertised, marketed, and/or sold natural wood shingles and siding that were not of merchantable quality or reasonably fit for their intended purpose, and that were prone to premature failure;
14. The Defendant's natural wood shingles and siding are prone to warping and are not suitable for use for the length of time advertised, marketed, and/or warranted. In particular, the shingles and siding are prone to warping, peeling, cracking, buckling, curling and opening up in normal weather conditions;
15. The Defendant knew or ought to have known that the shingle and siding design and material made the shingles and siding susceptible to premature failure;
16. The Defendant advertised that the shingles and siding were safe, reliable and worry-free when they knew or ought to have known that these statements were false and unsupported;
17. The Defendant misrepresented that its shingles and siding would last for thirty (30) years, and purportedly warranted its shingles and siding for that period against wood decay, the whole as appears from the Defendant's promotion brochure, a copy of which is produced herewith as **Exhibit P-5**;
18. The Defendant's representations lead reasonable consumers to believe that its shingles and siding are a premier product and warranted a premium price for that product;
19. The purpose of its 30-year warranty against wood decay can only be to persuade consumers that the shingles and siding are long lasting so that they will have continued curb appeal, and are functional with the ability to act as a weather barrier;
20. The 30-year warranty induces customers, including the Petitioners, into purchasing the shingles and siding and provides a false belief that the shingles

and siding are long-lasting and that Defendant stands behind its representations and will honor its warranty;

21. The Defendant knowingly and intentionally concealed and failed to disclose that, notwithstanding statements on its website, brochures, advertisements and warranties, its shingles and siding routinely warp, peel, crack, buckle, curl and open up far in advance of the expiration of the warranty period. Indeed, the Defendant's shingles and siding have deteriorated and will continue to deteriorate at a rate that demonstrates their lack of durability and resiliency;
22. Similarly, the Defendant knowingly and intentionally concealed and failed to disclose that it actually had no intention of providing the services set forth in its warranties and that it routinely fails to honor its warranty when consumers notified of the deterioration of the shingles and siding;
23. Because of the defective design, material choice, and manufacturing practices, the shingles and siding are inherently defective and fail in their intended purpose;
24. The Defendant and their authorized agents and sales representatives made the above-described assertions, representations and warranties in respect of their natural wood shingles and siding with the intent and purpose of inducing roofing suppliers, builders, contractors, roofers and consumers to purchase Maibec shingles and siding for installation;
25. If not remedied in a timely manner, the defects identified in the paragraphs above will result in water penetration into the home or other structure. This could caused damage to the building and create the risk of structural rot and proliferation of mould or mildew;
26. As a result of the defects identified in the paragraphs above, it is inevitable that many homeowners and other property owners will be required to remove and replace any Maibec shingles and siding from their homes or other building structures at a substantial cost to the property owner and substantial damage to the property. In many circumstances, homeowners and other property owners will have to remove and replace the entire roof;
27. The Petitioners allege that the Defendant knew or ought to have known before and during the time they sold Maibec natural wood shingles and siding that they were defective, not fit for use as roofing products for the length of time advertised, marketed and/or warranted, and prone to premature failure;
28. The Petitioners allege that had the defects been known, Maibec shingles and siding would not have been purchased or installed at their home;
29. The Petitioners allege that the Defendant failed in his duty and therefore is liable for any material injury caused and must provide reparation for the injury;

THE PERSONAL CLAIMS OF EACH OF THE MEMBERS OF THE CLASS AGAINST DEFENDANT ARE BASED ON THE FOLLOWING FACTS:

30. The claims of each of the members of the Class are based on the same facts as those upon which the claim of the Petitioners is based;
31. The Petitioners and the Class have suffered damages as a result of the purchase of shingles and siding that were not of merchantable quality or reasonably fit for their intended purpose, and that were prone to premature failure;
32. In light of the fact that the shingles and siding are inherently defective and fail in their intended purpose, each member of the Class is entitled to damages for the repair of their property in addition to damages for inconveniences and punitive damages;

THE COMPOSITION OF THE MEMBERS OF THE CLASS MAKES THE APPLICATION OF ARTICLES 59 AND 67 OF THE C.C.P. DIFFICULT AND/OR IMPRACTICAL FOR THE FOLLOWING REASONS:

33. The size of the Class consists of thousands of persons geographically dispersed throughout Canada and the United States;
34. Thus, it is impossible for the Petitioners to identify all such potential class members and/or obtain a mandate from each of them;
35. A class action will ensure the most efficient use of judicial resources;

THE IDENTICAL, SIMILAR OR RELATED QUESTIONS OF LAW OR OF FACT BETWEEN EACH MEMBER OF THE CLASS AND THE DEFENDANT, WHICH PETITIONERS WISHES TO HAVE DECIDED BY THIS CLASS ACTION ARE:

36. The identical, similar or related questions of fact and law between each Class Member and the Defendant which the Petitioners wishes to have settled by the class action are as follows:
 - (a) Did the Defendant breach a duty of care owed to the Petitioners and the Class by reason of the design, manufacture, marketing, and sale of shingles and siding that are inherently defective and fail in their intended purpose in a manner that render them unfit for the use for which they were intended or which so diminish its usefulness that the buyer would not have bought them or paid so high a price if she had been aware?
 - (b) Did the Defendant violate its legal and statutory obligations in regards to the *Civil Code of Québec* and the *Consumer Protection Act*, and, if required, the equivalent sections of foreign legislations and regulations and Common law principles;
 - (c) Are the Petitioners and members of the Class entitled to damages due to the Defendant's violation of its legal and statutory obligations?

- (d) What is the quantum of compensatory damages due to the Petitioners and the members of the Class?
- (e) Should damages for inconveniences be awarded against the Defendant? If so, in what amount?
- (f) Should punitive damages be awarded against the Defendant? If so, in what amount?

THE QUESTIONS OF LAW OR OF FACT WHICH ARE PARTICULAR TO EACH OF THE MEMBERS OF THE CLASS ARE:

- 37. Out of the damages recovered by the Class, collectively, from the Defendant, what amount of damages is each member of the Class entitled to?

IT IS EXPEDIENT THAT THE INSTITUTION OF A CLASS ACTION FOR THE BENEFIT OF THE MEMBERS OF THE CLASS BE AUTHORIZED FOR THE FOLLOWING REASONS:

- 38. The class action is an efficient procedural vehicle that allows members of the Class to have access to justice;
- 39. The legal and factual issues surrounding the Defendant conduct and its liability are identical for each member of the Class;
- 40. It is in the interests of justice that members of the Class be given the opportunity to participate in the institution of a Class action that would benefit all those who have sustained damages as a result of the Defendant's conduct;

THE NATURE OF THE RECOURSE WHICH THE PETITIONERS WISH TO EXERCISE ON BEHALF OF THE MEMBERS OF THE CLASS IS:

- 41. The nature of the recourse which the Petitioners wish to exercise on behalf of the members of the Class is an action in civil liability and damages;

THE CONCLUSIONS SOUGHT BY PETITIONERS AGAINST THE DEFENDANT ARE AS FOLLOWS:

- 42. The conclusions sought by the Petitioners are:

GRANT the Petitioners' action against the Defendant;

CONDEMN the Defendant to pay to the Petitioners and the Class Members compensatory damages for all monetary losses;

CONDEMN the Defendant to pay to the Petitioners and the Class Members damages for inconveniences and punitive damages;

GRANT the class action of the Petitioners on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

PETITIONERS REQUEST THAT THEY BE ASCRIBED THE STATUS OF REPRESENTATIVE

PETITIONERS ARE IN A POSITION TO REPRESENT THE MEMBERS OF THE CLASS ADEQUATELY FOR THE FOLLOWING REASONS:

43. The Petitioners, who requests that they be ascribed the status of representatives, will fairly and adequately protect and represent the interests of the Class members for the following reasons:
 - (a) The Petitioners understand the nature of the action;
 - (b) The Petitioners are well-informed of the facts alleged in this motion;
 - (c) The Petitioners are available to dedicate the time necessary for an action to collaborate with members of the Class;
 - (d) The Petitioners have retained an established Québec law firm with experience in class actions;
 - (e) The Petitioners do not have any interests in conflict with other members of the Class;

THE PETITIONERS PROPOSE THAT THE CLASS ACTION BE BROUGHT BEFORE THE SUPERIOR COURT OF THE DISTRICT OF QUÉBEC FOR THE FOLLOWING REASONS:

44. The Defendant's head office is located in the municipality of Saint-Romuald which is located in the judicial district of Québec;
45. The Petitioners are willing and available to travel to the judicial district of Québec;
46. The legal counsel for the Petitioners has an office in the judicial district of Québec;
47. The present motion is well founded in law and in fact;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioners the status of representatives of the persons included in the Class herein described as:

"All persons, who reside in Canada or the United States, that own or have owned, lease or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased homes and/or buildings that contain or have ever contained Maibec wood shingles and/or siding or that bought Maibec wood shingles and/or siding."

or such other group definition as may be approved by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- (a) Did the Defendant breach a duty of care owed to the Petitioners and the Class by reason of the design, manufacture, marketing, and sale of shingles and siding that are inherently defective and fail in their intended purpose in a manner that render them unfit for the use for which they were intended or which so diminish its usefulness that the buyer would not have bought them or paid so high a price if she had been aware?
- (b) Did the Defendant violate its legal and statutory obligations in regards to the *Civil Code of Québec* and the *Consumer Protection Act*, and, if required, the equivalent sections of foreign legislations and regulations and Common law principles;
- (c) Are the Petitioners and members of the Class entitled to damages due to the Defendant's conduct?
- (d) What is the quantum of compensatory damages due to the Petitioners and the members of the Class?
- (e) Should damages for inconveniences be awarded against the Defendant? If so, in what amount?
- (f) Should punitive damages be awarded against the Defendant? If so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Petitioners' action against the Defendant;

CONDEMN the Defendant to pay to the Petitioners and the Class Members compensatory damages for all monetary losses;

CONDEMN the Defendant to pay to the Petitioners and the Class Members damages for inconveniences and punitive damages;

GRANT the class action of the Petitioners on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with article 1006 C.C.P.;

REFER the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

THE WHOLE with costs, including the costs of all publications of notices.

Québec, November 18, 2013


SISKINDS, DESMEULES, S.E.N.C.R.L.
Lawyers for the Petitioners

SCHEDULE 1

NOTICE TO DEFENDANT

Take notice that the Petitioners have filed this action or application in the office of the Superior Court of the judicial district of Québec.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Québec located at 300, boulevard Jean-Lesage, Québec within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on January 27, 2014 at 10h00 a.m. in room 3.14. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case, unless you have made a written agreement with the Petitioners or the Petitioners' advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Québec, November 18, 2013


SISKINDS, DESMEULES, S.E.N.C.R.L.
Lawyers for the Petitioners

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC
NO:**

**(Class Action)
SUPERIOR COURT**

**Helen E. Raleigh and Steven
Raleigh**

Petitioners

v.


Maibec Inc.

Defendant

LIST OF EXHIBITS

- Exhibit P-1:** Construction contract for the property located at 214, Midland Avenue, Lewes, Delaware signed with Trivits Construction LLC;
- Exhibit P-2:** Receipt from Horstmeier Lumber dated June 15, 2005;
- Exhibit P-3:** Chain of emails sent between the parties;
- Exhibit P-4:** Statement of information of the Québec Companies Registry relating to Maibec Inc.;
- Exhibit P-5:** Maibec Inc. promotion brochure.

Québec, November 18, 2013



SISKINDS, DESMEULES, S.E.N.C.R.L.

Lawyers for the Petitioners

SUPERIOR COURT (Class Action)
DISTRICT OF QUÉBEC

Helen E. Raleigh and Steven Raleigh

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**MOTION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF
REPRESENTATIVE**

(Articles 1002 and seq. C.C.P)

Mtre. Samy Elnemr
O/File: 67-102

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