



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Court File No.:

CY-10-395207-000

T A & K ENTERPRISES INC.

Plaintiff

- and -

SUNCOR ENERGY PRODUCTS INC. and SUNCOR ENERGY INC.

Defendants

Proceeding 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 lawyers 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: January 18, 2010

Issued by: _____


Local Registrar

**Y. Grant
Registrar**

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 2J6

TO: SUNCOR ENERGY PRODUCTS INC.
36 York Mills Road
Toronto, Ontario M2P 2C5

AND TO: SUNCOR ENERGY INC.
2489 North Sheridan Way
Mississauga, Ontario L5K 1A8

CLAIM

1. The plaintiff claims:

- (a) a declaration that the defendant, Suncor Energy Products Inc. (“Suncor Products”), was required to deliver to each member of the class defined below a disclosure document within the meaning of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 (“Wishart Act”) at least fourteen days before the class member signed the Retailer Franchise Agreement (“RFA”), as described below;
- (b) a declaration that Suncor Products breached s. 5 of the Wishart Act by failing to deliver a disclosure document to each class member before the class member signed the RFA;
- (c) a declaration that each class member is entitled under s. 6 of the Wishart Act to rescind the RFA within two years of signing the RFA;
- (d) a declaration that the defendant, Suncor Energy Inc. (“Suncor Inc.”), is a franchisor’s associate within the meaning of the Wishart Act;
- (e) a declaration that Suncor Products and Suncor Inc. are required to pay to each rescinding class member compensation under ss. 6(6) of the Wishart Act within sixty days after receiving a valid notice of rescission;
- (f) a declaration that Suncor Products and Suncor Inc. are liable, jointly and severally, to each class member for damages under ss. 7(1) of the Wishart Act by reason of Suncor Products’ failure to comply with s. 5 of the Wishart Act in respect of the RFA;
- (g) an aggregate assessment of damages pursuant to s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) in an amount to be proven, not exceeding

\$200,000,000, or, alternatively, an order pursuant to s. 25 of the CPA directing individual hearings in respect of the compensation or damages of each class member under ss. 6(6) or 7(1) of the Wishart Act and directions with respect to same;

(h) a declaration that any transition payments paid to a class member pursuant to the Termination Letter (as defined below) are to be credited against the class member's damages under s. 7(1) of the Wishart Act;

(i) a declaration that any waiver or release procured from class members is null, void and unenforceable in respect of the class members' rights under the Wishart Act;

(j) a declaration that any purported agreement by a class member not to commence or participate in a class action against either of the defendants is null, void and unenforceable;

(k) costs of this action on a substantial-indemnity basis, plus applicable goods and services and harmonized sales tax; and

(l) such further and other relief as this Honourable Court deems just, including all further necessary or appropriate accounts, inquiries and directions.

The parties and proposed class

2. The plaintiff, T A & K Enterprises Inc. ("TAK"), is incorporated under the laws of Ontario. TAK carries on business under the Sunoco banner in the Town of Richmond Hill in the Province of Ontario as a retail operator of a petroleum station, convenience store, car wash and propane filling station operating under an RFA with Suncor Products, as franchisor. TAK has been a Sunoco franchisee since 1995 under a series of RFAs entered into with Suncor Products at various times.

3. Suncor Products is incorporated under the laws of Ontario and has its head office in the City of Toronto. Suncor Products carries on business throughout Ontario as a franchisor of retail petroleum stations, convenience stores, car washes and propane filling stations under the “Sunoco” banner.

4. Suncor Inc. is a publicly-traded company, incorporated under the laws of Canada. Suncor Inc. amalgamated with Petro-Canada effective August 1, 2009 pursuant to a plan of arrangement under the *Canada Business Corporations Act*. Suncor Inc. is the parent of Suncor Products and is a franchisor’s associate of Suncor Products within the meaning of the *Wishart Act*. Suncor Inc. directly or indirectly owns or franchises to others the right to operate the Sunoco and Petro-Canada retail systems.

5. TAK is a member of, and brings this action on behalf of, the following proposed class:

All persons which signed a Retailer Franchise Agreement with Suncor Energy Products Inc. after January 18, 2008 (the “Class”).

6. There are approximately 300 members of the Class.

The 2008 Retailer Franchise Agreement

7. The most recent RFA between TAK and Suncor Products was dated September 25, 2008 and executed on November 11, 2008. The RFA had a term of one year commencing November 15, 2008 and ending November 14, 2009 unless extended pursuant to the overholding provision in s. 50.2 thereof.

8. Section 50.2 of the RFA provides that if the Retailer remains in possession of the Store after the expiry of the term, the agreement would continue on a month-to-month basis until terminated by either party on 30 days’ written notice.

9. Most or all other class members' RFAs were for a term ending in or around November 2009 unless extended pursuant to the overholding provision.

Suncor Products and Suncor Inc. terminate the franchise agreements

10. In or about July, 2009, class members began to receive announcements from the defendants that the Competition Bureau had approved the proposed amalgamation of Suncor and Petro-Canada subject to the requirement that the defendants divest approximately 104 retail service station sites from their network. The balance of the Sunoco retail sites would be rebranded as "Petro-Canada" retail sites.

11. Following the amalgamation of Suncor and Petro-Canada, the defendants notified all class members that they would be extending the RFAs on a month-to-month basis following the expiration of the one year term.

12. In October, 2009, the defendants notified all class members that all RFAs would be terminated on a date to be chosen by Suncor Products. Until that termination date, the RFAs would be extended and continued on a month-to-month basis. Suncor Products restated that the extension preserved all existing terms and conditions of the RFA, which would allow class members to operate in an uninterrupted manner.

13. By e-mail dated October 28, 2009, the defendants informed the class members that they were converting to Petro-Canada's retail distribution models, including the area retail license model whereby one retail associate would operate between 10 and 12 retail sites. The area retail license model would significantly reduce the number of franchisees needed to operate the sites. In order to accommodate this conversion, all class members' RFAs would be terminated.

14. By e-mail dated November 3, 2009 to those class members whose retail sites were being

divested, Suncor Products confirmed that those class members would continue to operate their retail sites under their existing RFAs until the time of sale to the third party purchaser.

15. By letters dated on or about January 12, 2010 (the “Termination Letters”), the defendants terminated the RFAs of approximately 200 of the 300 class members pursuant to s. 50.2 of the RFA. The effective date of TAK’s termination is August 12, 2010. The RFAs would continue to be extended until the termination date. The class members were offered “transition payments” subject to complying with certain conditions.

16. On January 15, 2010, the defendants met with the class members whose retail sites were to be divested and advised them that they would not be offered transition payments, or other compensation, and that they would receive notices of termination of their RFAs beginning in or around April 2010. Until termination, they would continue to operate under their RFAs.

Defendants failed to comply with disclosure obligations

17. Suncor Products is a “franchisor” within the meaning of s. 1(1) of the Wishart Act.

18. Suncor Inc is a “franchisor’s associate” within the meaning of s. 1(1) of the Wishart Act.

19. The RFA is a “franchise agreement” within the meaning of ss. 1(1) and 5(1)(a) of the Wishart Act.

20. The class members were “prospective franchisees” in respect of their respective RFAs within the meaning of ss. 1(1) and 5(1) of the Wishart Act.

21. Suncor Products was required to deliver a disclosure document to each class member pursuant to s. 5 of the Wishart Act at least 14 days before each class member entered into its respective RFA.

22. In breach of its statutory obligation, Suncor Products did not provide a disclosure document to each and every class member before they entered into their respective RFAs.

23. Pursuant to s. 6 of the Wishart Act, a franchisee which does not receive a disclosure document as required by the Wishart Act has two years to rescind the franchise agreement.

24. A franchisee which rescinds a franchise agreement under s. 6 of the Wishart Act is entitled to compensation from the franchisor and the franchisor's associate under ss. 6(6) of the Wishart Act.

25. Pursuant to s. 7 of the Wishart Act, a franchisee has a right of action for damages against the franchisor and the franchisor's associate if the franchisee suffers a loss as a result of the franchisor's failure to comply in any way with s. 5 of the Wishart Act.

26. TAK pleads and relies on ss. 5(1), 6(2), 6(6) and 7(1) of the Wishart Act and seeks the declarations and other relief described in paragraph 1 hereof.

Releases solicited from class members null and void respecting claims under Wishart Act

27. The Termination Letter offered the class members a transition payment which varied from class member to class member.

28. In order to receive the transition payment, the Termination Letter required the class members to comply with certain conditions and sign a general release in favour of Suncor Products (the "Release").

29. The Release is null, void and unenforceable in respect of the class member's rights under the Wishart Act. The plaintiff pleads and relies on s. 11 of the Wishart Act.

Class action waivers null and void

30. Section 64.1 of the RFA purports to prevent the class members from participating in any class action proceeding against Suncor Products “to the extent permitted by applicable law”. Such provision is null, void and unenforceable. The plaintiff pleads and relies on s. 4 of the Wishart Act.

31. The Release also purports to prevent the class members which sign it from participating in any class action against Suncor Products. Such provision is similarly null, void and unenforceable. The plaintiff pleads and relies on s. 4 of the Wishart Act.

32. The plaintiff proposes that this action be tried at the City of Toronto, Ontario.

January 18, 2010

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Plaintiff

-and-

SUNCOR ENERGY PRODUCTS INC. et. al.
Defendants
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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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