

Court file no. 97-CV-135179 A

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

PATRICK BERRY, JAMES DELUCE,
JEFFREY KARLESEN, ROBERT JAMES SIMERSON
and ERNEST ZURKAN

PLAINTIFF(S)

and

CHRIS PULLEY, TOM FRASER
LARS T. JENSEN and JAMES GRIFFITH

DEFENDANT(S)

and

MICHAEL LYNCH

THIRD PARTY

THIRD PARTY CLAIM

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff(s) against the defendant(s) for the relief claimed in the statement of claim served with this third party claim. The defendant(s) has/have defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant(s) claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party 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 third party 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 third party 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 third party defence.

YOU MAY ALSO DEFEND the action by the plaintiff(s) against the defendant(s) by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, 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: *16th November 1998.*

Issued by *A. Vancilunas*
Local registrar

Address of court office:

~~361 University Avenue~~
~~Toronto, Ontario~~ - *n.*
M5G 1T3

(Name, address and fax number of third party)
TO

Michael Lynch

393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E6

393 AVE. UNIVERSITY
10E ÉTAGE
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AND TO

BORDEN & ELLIOT
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40 King Street W.
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Frank J.C. Newbould, Q.C.
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Timothy O. Buckley
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Solicitors for the Plaintiffs

CLAIM

1. The Defendants claim against the Third Party:
 - a. contribution and indemnity for any and all amounts which the Defendants may be called upon to pay to the Plaintiffs;
 - b. contribution and indemnity for their costs of defending the main action;
 - c. their costs of the Third Party claim;
 - d. pre-judgement and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, C-43 as amended;
 - e. such further and other relief as this Honourable Court deems just.
2. The Third Party, Michael Lynch, is a resident of the City of Winnipeg in the Province of Manitoba.
3. The Third Party, Michael Lynch, is the Executive Vice-President of the Air Line Pilots Association.
4. The Air Line Pilots Association (“ALPA”) is an unincorporated association with the primary purpose of representing airline pilots in collective bargaining with their employers.
5. Effective February 1, 1997, the Canadian Air Line Pilots Association (“CALPA”) was merged into the Air Line Pilots Association.

6. The Defendants claim against the Third Party, Michael Lynch, as a representative of a proposed class of persons consisting of all the members of ALPA.
7. The terms of the merger between CALPA and ALPA are set out in a written Merger Agreement ratified by CALPA in November, 1996, and by ALPA in January, 1997. Pursuant to the Merger Agreement, on February 1, 1997, all of CALPA's property and assets vested in ALPA, and in consideration thereof, ALPA assumed all debts, liabilities, contract obligations and other obligations of CALPA.
8. The Plaintiffs in their Further Amended Statement of Claim herein seek damages on behalf of themselves and all other Air Ontario pilots employed as of March 28, 1995, against the Defendants and all other Air Canada pilots employed by Air Canada as of March 28, 1995. The damages claimed by the Plaintiffs are for alleged breaches of contract, conspiracy, interference with economic interests, and interference with contractual relations.
9. The Defendants plead and rely on the facts set out in their Further Amended Statement of Defence.
10. The Defendants and all Air Canada pilots in the proposed Defendant class were members of CALPA during the period when the alleged breaches of contract, conspiracy, interference with economic interests, and interference with contractual relations are alleged to have occurred.
11. In the event that this Honourable Court should find that the Defendants Pulley and Fraser, or members of the Air Canada MEC, the Air Canada Merger representatives or members of the Air Canada Negotiating Committee, are liable to the Plaintiffs for damages, which is not admitted but specifically denied, then they are entitled to be indemnified by ALPA pursuant to the obligation set out in section 1A 4 of CALPA's Administrative Policy:

“Liability of Association Directors, Officers and Staff Members

The Association shall protect and hold harmless its President and designated officers and staff members from any legal liability arising from actions done in the course of their duties with the Association and shall defend them in any lawsuits arising therefrom.

Moreover, the Association shall provide individual written notification of such hold harmless undertakings to each of these designated directors, officers and staff members.

The Association shall further protect and hold harmless any other officer, member or employee from any legal liability to third parties arising from authorized and lawful actions done in good faith on behalf of the Association and within the scope of and in the course of his authorized duties with the Association.

The Association may, at its sole discretion, provide part or all of this provision through liability insurance.

This protection shall not apply in the event of gross negligence or wilful misconduct, or where an alternative recourse is available, whether or not it is exercised.”

12. Further, by virtue of the nature of a trade union in law and as an implied term of the CALPA Constitution, any judgment obtained as a result of a private action against a member of CALPA resulting from group action by a CALPA bargaining unit on matters related to collective bargaining, would be capable of execution only against the property and assets of CALPA.
13. CALPA’s obligation in law to satisfy any judgment against members of the proposed Defendant class was assumed by ALPA under the terms of the Merger Agreement.
14. Therefore, in the event that this Honourable Court should find that members of the proposed Defendant class are liable to the Plaintiffs for damages, which is not admitted but specifically denied, then judgement should issue against the Third Party or, in the

alternative, ALPA is liable to indemnify the members of the Defendant class from the property of ALPA.

15. The Defendants propose that the trial of this Third Party Claim be heard together with or immediately after the trial of the main action.

Date of issue: November ^{16th - 17th} ~~12~~, 1998

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LSUC 024450L
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Solicitors for the Defendants

PATRICK BERRY et al

PLAINTIFF(S)

and

CHRIS PULLEY et al
DEFENDANT(S)

and

MICHAEL LYNCH
THIRD PARTY

(Short title of proceeding)

Court file no. 97-CV-135179

ONTARIO COURT (GENERAL DIVISION)
Proceeding commenced at Toronto

THIRD PARTY CLAIM

(GENERAL)
(Form 29A under the Rules)

DYE & DURHAM CFS

Name, address, telephone and fax numbers of solicitor or party

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Solicitor(s) for the defendant(s)

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