



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**GULED WARSAME and SHELLI SAREEN on their own behalf and on
behalf of all members of UNITE HERE Local 75**

Plaintiffs

and

**DAVID SANDERS, ASHLEY HAYES, RAFUNZEL KORNGUT AND ALLAN PACE
on his own behalf and on behalf of all members of THE TORONTO HOSPITALITY
EMPLOYEES UNION – CSN (THEU-CSN)**

Defendants

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 27, 2024 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
85 Frederick Street
Kitchener, ON N2H 0A7

TO: **DAVID SANDERS, ASHLEY
HAYES, RAFUNZEL KORNGUT
AND ALLAN PACE on his own
behalf and on behalf of all members
of THE TORONTO HOSPITALITY
EMPLOYEES UNION – CSN
(THEU-CSN)**

Suite 200 - 102 Adelaide Street East
Toronto, Ontario
M5C 1K9

CLAIM

1. The Plaintiffs claim as against each of the Defendants and anyone with knowledge of the order and their agents the following:

- (a) An Order naming Guled Warsame and Shelli Sareen, respectively the President and Secretary Treasurer of UNITE HERE Local 75 [“Local 75”], as representative plaintiffs acting on behalf of all of the members of Local 75;
- (b) Declarations that Guled Warsame and Shelli Sareen, Local 75, and all other affected Members of Local 75 are entitled to equitable and injunctive relief against the Defendants, including the relief pled herein;
- (c) An interim, interlocutory and permanent injunction and/or mandatory order as against the Defendants, David Sanders, Ashley Hayes, Rafunzel Korngut and Allan Pace on his own behalf and on behalf of all members of the Toronto Hospitality Employees Union – CSN [“THEU – CSN”]:
 - (i) restraining the Defendants from disclosing any Confidential Information and intellectual property (as defined below), in perpetuity;
 - (ii) restraining the Defendants from using, directly or indirectly, the Confidential Information and intellectual property for their own purposes or for any purpose at all;
 - (iii) requiring the Defendants to immediately deliver to the Plaintiffs all property, equipment, documents and data belonging to the Plaintiffs;

- (iv) requiring the Defendants to immediately deliver up to the Plaintiffs the Confidential Information, including the Confidential Information and intellectual property known to have been wrongfully appropriated as described below, and without limiting the generality of the foregoing, any and all documents and/or records, emails and any other property belonging to the Plaintiffs that is in the Defendants' power, possession or control, including any copies thereof regardless of how they are stored (including any copies stored in hard copy, electronically, optically, magnetically, or otherwise);
- (v) directing the Defendants to permanently delete and destroy any and all Confidential Information and intellectual property, which has been saved and/or stored on any computer, laptop, hard drive, cellular phone, or any other electronic device within their power, possession or control, and to furnish a sworn statement confirming the deletion or destruction; or, in the alternative, an Order directing the Defendants to instruct a third party authorized by the court to do so, at their expense;
- (vi) requiring the individual Defendants to submit to examinations to be conducted by the Plaintiffs within a period of time directed by the Court, with respect to the individual Defendants' activities with the Confidential Information and intellectual property prior to and subsequent to the cessation of these individuals' employment with the Plaintiffs;

- (vii) appointing a receiver or, in the alternative, an inspector pursuant to section 101 of the *Courts of Justice Act* with full power to investigate the Defendants' use, possession, and/or control over the Confidential Information and intellectual property, which powers included but are not limited to the power:
1. to investigate the whereabouts of the Confidential Information and intellectual property;
 2. once ascertained, to hold and preserve such Confidential Information and intellectual property pending further Order of the Court; and,
 3. to compel the production of documents and examine third parties;
- (viii) an interim pretrial discovery Order (a *Norwich Pharmacal* Order) requiring persons or entities with knowledge or documents relating to the matters in this action to provide such information and documentation to the Plaintiffs;
- (d) Damages in an amount to be determined at the trial of this action on account of the Defendants' wrongdoing including, *inter alia*, their:
- (i) breach of contract;
 - (ii) breach of fiduciary duty;
 - (iii) breach of confidence;
 - (iv) conversion;

- (v) detinue;
 - (vi) trespass to chattels;
 - (vii) unlawful interference with economic relationships;
 - (viii) breach of duty of good faith;
 - (ix) breach of duty of fidelity;
 - (x) theft of the Plaintiffs' Confidential Information and intellectual property;
and,
 - (xi) unlawful use of confidential information.
- (e) Punitive damages in the amount of \$100,000;
 - (f) prejudgment and postjudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (g) costs of this action on a substantial indemnity basis; and,
 - (h) such further and other relief as this Honourable Court deems just.

Overview

2. The Plaintiffs claim as against the Defendants for, *inter alia*, torts and wrongdoing, including breach of confidence, relating to the Defendants' acquisition, continued possession, use and misuse of the Confidential Information and intellectual property. Specifically, the Plaintiffs claim that the Defendants have acquired its confidential information, that this information was

conveyed to the Defendants in confidence, and that the Defendants have misused and continue to misuse the Confidential Information and intellectual property.

The Parties

2. The Plaintiff, Guled Warsame, is presently the President of Local 75 and the Canadian Director of the UNITE HERE International Union [the “IU”].

3. The Plaintiff, Shelli Sareen, is presently the Secretary-Treasurer of Local 75.

4. Local 75 is a local trade union within the IU. The IU represents over 275,000 people working at, *inter alia*, hotels, restaurants, food concession companies, airports, casinos, and racetracks in North America. The IU’s members include over 25,000 people working in Canada who are members of various local unions such as Local 75.

5. Local 75 and its predecessors have been representing workers in the Province of Ontario for over 120 years.

6. Local 75 is certified to represent employees working at various hotels and other facilities in the Province of Ontario.

7. Local 75’s members are unionized employees employed at various hotels and other facilities in the Province of Ontario. Local 75’s members include members employed at facilities in the Kitchener-Waterloo region.

8. The individual Defendants, David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace, were formerly employed by Local 75 or the IU in various capacities. These individual

Defendants all worked out of Local 75's offices in Toronto. Their employment with Local 75 or the IU ceased in 2018, as particularized below.

9. THEU – CSN is a branch, unit, local, and/or affiliated member of the Confédération des syndicats nationaux [or “CSN”]. The CSN is a trade union that operates predominantly in the Province of Quebec. Particulars concerning the manner in which the THEU – CSN was formed and became affiliated with the CSN are more particularly known to the THEU – CSN.

10. The THEU – CSN operates out of its head office in Toronto at Suite 200 - 102 Adelaide Street East.

11. At the present time, the Defendant, Allan Pace, is the President of the THEU – CSN.

12. At the present time, the Defendant, Ashley Hayes, is the Secretary-Treasurer of the THEU – CSN.

13. At the present time, the Defendant, Rafunzel Korngut, is the Vice President, Communications and Mobilization of the THEU – CSN.

14. At the present time, the Defendant, David Sanders, is employed as an Organizer with the THEU – CSN.

The Relevant Labour Relations Context

15. Since the late 1890s, Local 75 and its predecessors have organized its members at various hotels and other facilities in the Province of Ontario. Such organization has included steps taken to bring such members together to have Local 75 certified as the exclusive bargaining agent for such members at the aforesaid hotels and other facilities.

16. Once certified as the exclusive bargaining agent for members, Local 75 is then given legislative and other powers to, *inter alia*, bargain with relevant employers on behalf of those members to secure a collective agreement for the benefit of those members.

17. Once so certified, Local 75 then plays a crucial role on behalf of its members vis à vis their respective employers, including by taking carriage over disputes that arise under collective agreements.

18. To achieve the status of certified bargaining agent and in order to service its members, Local 75 has in the past secured from and regarding its members their names, contact details, phone numbers, addresses, and/or email addresses.

19. Without limiting the generality of the plea at paragraph 18, Local 75's efforts to secure member names, contact details, phone numbers, addresses, and/or email addresses involves speaking directly to such members or potential members to secure their support for Local 75 and its activities.

20. The efforts pled at paragraphs 18 and 19 include efforts made by persons employed directly by Local 75 to perform those services.

21. Local 75 also negotiates collective agreement entitlements with employers that entitle it to receive updated and accurate monthly and quarterly membership records that include member names, contact details, phone numbers, addresses, and/or email addresses.

22. At all times material, Local 75 secured the information pled in paragraphs 18-21 and stored this information in documents and devices owned and operated exclusively by Local 75 solely for the purposes of using that information for matters with Local 75's jurisdiction. The documents,

devices, and other means by which this information pled at paragraphs 18-21 is stored, as well as the information itself, is herein defined as the “Confidential Information and intellectual property”.

23. The Plaintiffs plead that the Confidential Information and intellectual property is highly sensitive and confidential. The Confidential Information and intellectual property was obtained for specific uses and only for those specific uses. Local 75 members who disclosed information that later formed part of the Confidential Information and intellectual property expect and expected – and would expect and would have expected – that Local 75 would use the Confidential Information and intellectual property solely for its own organizing and representation purposes.

24. Further, Local 75 members who disclosed information that later formed part of the Confidential Information and intellectual property expected – and would have expected – Local 75 not to use the Confidential Information and intellectual property for any other purpose.

25. Similarly, employers who disclosed information that later formed part of the Confidential Information and intellectual property pursuant to Local 75’s collective agreements expect and expected – and would expect and would have expected – that Local 75 would use the Confidential Information and intellectual property solely for its own organizing and representation purposes.

The Events of 2017-2018

26. In 2017, Local 75 was a member of the Canadian Labour Congress, an organization that brings together many unions across Canada for advocacy and support purposes. The Canadian Labour Congress encourages its union affiliates to focus union organizing efforts on non-unionized workers and discourages “raiding” whereby one union attempts to displace existing bargaining rights held by another union.

27. In 2017, the Canadian Labour Congress included among its members many significant trade unions, including Unifor, a successor to the Canadian Auto Workers.

28. At some point in 2017 or early 2018, Unifor decided to disaffiliate itself from the Canadian Labour Congress. In or around January 2018, Unifor left the Canadian Labour Congress.

29. In 2017-2018, Local 75 decided to remain affiliated with the Canadian Labour Congress. Local 75 continues to be a member of the Canadian Labour Congress.

30. As this shift in the labour relations landscape was taking place, changes were afoot at Local 75. In 2017, a rivalry developed between executives at Local 75 who supported the President and those who supported another of its executives. The then President, Lisabeth Pimentel, was likewise dissatisfied with the actions of Local 75's international parent union, UNITE HERE.

31. In the Fall of 2017, UNITE HERE voted to place Local 75 under trusteeship. Without limiting the generality of the plea of trusteeship, what this meant was that UNITE HERE would take over the running and management of Local 75 by, *inter alia*, appointing a trustee to take over its affairs.

32. Ms. Pimentel and her supporters disputed the imposition of the trusteeship. On or about December 11, 2017, Ms. Pimentel commenced an Action in the Superior Court on her own behalf and on the purported behalf of members of Local 75. The Action sought, *inter alia*, relief and remedies for what was alleged to have been the improper imposition of the trusteeship.

33. Ms. Pimentel likewise sought injunctive relief to temporarily halt the trusteeship. After extensive litigation over the course of a month, in or around mid-January 2018, Ms. Pimentel

served a Notice of Discontinuance and advised the Defendant that she was abandoning her motion for injunctive relief.

34. On April 27, 2018, the Superior Court awarded costs of \$30,000 to the Defendant (“Donald Taylor on his own behalf and on behalf of all members of UNITE HERE, (INTERNATIONAL)”) because of Ms. Pimentel’s litigation and the abandonment thereof.

35. In the Court’s reasons (2018 ONSC 3258), the Court held that Ms. Pimentel and her supporters abandoned the litigation while simultaneously joining Unifor with the express purpose of engaging in a “raid” of the bargaining units held and serviced by Local 75.

36. By the time of this abandonment, Unifor had been taking and/or was looking to take active steps to recruit members of Local 75 to join Unifor.

37. Further, as of some point in 2018 and pursuant to legislation in Ontario and Local 75’s collective agreements, a raiding “open period” opened up at multiple Local 75 hotel bargaining units in Toronto whereby trade unions other than Local 75 could take steps to have themselves certified as the exclusive bargaining agents for workers whose exclusive bargaining agent was hitherto Local 75.

The Termination of Employment of the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace

38. On or about December 14, 2017, Ms. Pimentel had the locks changed at Local 75’s head offices at 15 Gervais Drive in Toronto.

39. Throughout December 2017 and January 2018, the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace and other employees of Local 75, acting in concert with

these individual Defendants, removed physical and electronic documents from Local 75's head offices.

40. As of January 2018, the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace were still employed by Local 75 or the IU in various executive and/or leadership capacities and working out of Local 75's head offices at 15 Gervais Drive in Toronto.

41. The IU formally imposed a trusteeship on Local 75 in early January 2018.

42. Due to the activities of the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace – as well as those of others within Local 75 who supported Unifor's raiding efforts – the trustee appointed by UNITE HERE determined that it was in Local 75's best interests to terminate their employment, effective immediately.

43. In or around early January 2018, Local 75 and the IU terminated the employment of David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace.

44. In the course of terminating these individuals' employment, Local 75 and the IU communicated to them that they were to return any and all confidential information and/or property belonging to Local 75. The Plaintiff pleads that the Confidential Information and intellectual property formed part of the confidential information and/or property that these individuals were asked to return.

45. On or about January 16, 2018, Ms. Pimentel went to work as President of Unifor Local 7575.

46. The Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace followed Ms. Pimentel to UNIFOR Local 7575, where they were employed and/or served as union officers.

47. On or about January 16, 2018, Unifor Local 7575, in association with David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace, launched a public campaign to raid Local 75's bargaining rights and deliver Local 75's membership to Unifor.

48. Unifor Local 7575, in association with Ms. Pimentel, David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace, engaged in extensive organizing and raid campaigning at multiple hotels where Local 75 was the bargaining agent.

49. Unifor Local 7575 successfully raided approximately six (6) of Local 75's properties as part of this raid campaign.

50. Among other properties, Unifor Local 7575 attempted to raid Local 75's bargaining unit at the Fairmont Royal York Hotel in Downtown Toronto.

51. After multi-year proceedings at the Ontario Labour Relations Board, Local 75 retained its bargaining rights at the Fairmont Royal York Hotel.

The 2022 Onward THEU – CSN Organization Drive and the Misuse of the Confidential Information and Intellectual Property

52. At some point more fully known to the CSN, the CSN set its sights on organizing workers employed at Ontario hotels, including members of Local 75.

53. As part of this organizing drive, the CSN hired or contracted with each of the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace. Particulars of the contractual or

other arrangements between the CSN and each of David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace are more fully known to the Defendants.

54. Further, or in the alternative, the THEU – CSN hired or contracted with each of the Defendants David Sanders, Ashley Hayes, Rafunzel Korngut, and Allan Pace. Particulars of the contractual or other arrangements between the THEU – CSN and each of David Sanders, Ashley Hayes, Rafunzel Korngut, and Alan Pace are more fully known to the Defendants.

55. By some point in 2022, a fresh raiding period commenced at some of Local 75’s hotel properties in Ontario, permitting THEU – CSN to engage in raiding activities.

56. The THEU – CSN has, in 2024 if not earlier, actively tried to solicit the support of Local 75 members to join the THEU – CSN and/or to support the THEU – CSN in its effort to organize Local 75 members located at hotels and other employers.

57. As part of these efforts, the THEU – CSN commenced proceedings in 2022 at the Ontario Labour Relations Board to displace Local 75 as the exclusive bargaining agent for certain employees employed at the Fairmont Royal York Hotel in Toronto.

58. THEU – CSN has become certified to represent a subset of employees employed at the Fairmont Royal York Hotel in Toronto, but it has not yet negotiated a collective agreement on behalf of those employees. The Ontario Labour Relations Board proceedings to determine who will represent the majority of unionized employees at the Fairmont Royal York Hotel are ongoing.

59. Under the laws of Ontario and Local 75’s collective agreements, raiding “open periods” opened up again at multiple Local 75 hotel bargaining units in Toronto on or around May 1, 2024.

60. In the weeks leading up to May 1, 2024 and thereafter, Local 75 became aware that many of its members employed at facilities other than the Fairmont Royal York Hotel were being contacted by persons, including the Defendants, acting for or purporting to represent the interests of THEU – CSN and inviting members to sign THEU-CSN union cards. Such contact included, but was not limited to, the use of mail and text message communication to convey messages to Local 75 members in favour of the THEU – CSN.

61. The Plaintiff pleads, and the fact is, that the only way in which the Defendants could have communicated to the Local 75 members in the manner that they did was through the use of the Confidential Information and intellectual property.

62. Without limiting the generality of the plea in paragraph 61, the Defendants have been contacting Local 75 members who are no longer employed at a hotel or other Local 75 employer, including some who have not been so employed for years. The Defendants could not have therefore secured such contact details by speaking with Local 75 members in or around hotel or other properties recently so as to more lawfully secure current contact information.

Causes of Action and Relief Requested

63. The Plaintiffs plead, therefore, that the Defendants, or one or more of the Defendants:

- (a) took the Confidential Information and intellectual property;
- (b) stored or saved the Confidential Information and intellectual property on systems, documents, devices, or other modalities within their care, power, and/or control;
and/or,

- (c) have used and are continuing to use Confidential Information and intellectual property.

64. At all times material, the Confidential Information and intellectual property was the property of Local 75 or, further or in the alternative, was the property of Local 75's members.

65. At all times material, the Defendants had no right to take, store, save, and/or use the Confidential Information and intellectual property.

66. Further, the Defendants knew or ought to have known that they did not have the right to take, store, save, and/or use the Confidential Information and intellectual property.

67. The Plaintiffs therefore claim that the Defendants, or one or more of the Defendants, have acted unlawfully and to the harm and detriment of the Plaintiffs and Local 75 members. Such unlawful conduct includes:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) breach of confidence;
- (d) conversion;
- (e) detinue;
- (f) trespass to chattels;
- (g) unlawful interference with economic relationships;

- (h) breach of duty of good faith;
- (i) breach of duty of fidelity;
- (j) theft of the Plaintiffs' Confidential Information and intellectual property; and,
- (k) unlawful use of confidential information.

68. As a result of this unlawful conduct, the Plaintiffs claim the damages, declarations, injunctive relief, and other remedies set out in paragraph 1.

69. The Plaintiffs further plead that the Defendants' deliberate, high-handed and callous conduct described herein warrants condemnation by this Honourable Court. The Defendants have committed independently actionable wrongs which are so malicious and high handed that they are deserving of punishment on their own. Without limiting the generality of the foregoing, the Defendants stole and are misusing confidential personal and private information to which they have no right. Further, the Defendants at all times knew that they had no right to use this information.

70. The Plaintiffs plead that the Defendants' conduct warrants sanction in the form of punitive damages and accordingly claims the punitive damages set out in paragraph 1.

71. As this matter is urgent, the Plaintiffs request that the action be managed and tried on an expedited basis in Kitchener, Ontario.

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May 27, 2024

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