

COPY

2021 04G0129 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

RUTH HIGDON

FIRST PLAINTIFF

AND:

CLYDE COMPTON

SECOND PLAINTIFF

AND:

HERBERT BRAY

THIRD PLAINTIFF

AND:

HILLY ACRES FARM LIMITED

DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

STATEMENT OF CLAIM

THE PARTIES

1. The First Plaintiff is Ruth Higdon, whose address for service is c/o Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2 and whose phone number is 709-739-6688. At all material times she was a resident of Newfoundland and Labrador and consumed egg products produced by the Defendant.
2. The Second Plaintiff is Clyde Compton, whose address for service is c/o Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2 and whose phone number is 709-739-6688. At all material times he was a resident of Newfoundland and Labrador and consumed egg products produced by the Defendant.
3. The Third Plaintiff is Herbert Bray, whose address for service is c/o Bob Buckingham Law, 81 Bond Street, St. John's, NL A1C 1T2 and whose phone number is 709-739-6688. At all material times he was a resident of Newfoundland and Labrador and consumed egg products produced by the Defendant.

4. The Defendant is a corporation operating out of Nova Scotia. Its address for service is 289 Millville Hwy, Millville, Nova Scotia, B1Y 2E1. At all material times the Defendant produced chicken eggs for sale throughout the province of Newfoundland and Labrador.

THE CLASS

5. The Plaintiffs bring this action under the Class Actions Act SNL 2001 c. C-18.1 on their own behalf and on behalf of a class consisting of:
 - (a) All natural persons in Newfoundland and Labrador who suffered physical illness or injury after handling or consuming eggs or products containing eggs which were subject of a Food Recall and Notification issued by the Canadian Food Inspection Agency on October 8th, 2020, updated on October 9th, 2020, and December 12th, 2020 related to its food safety investigation of the contamination of Salmonella present in eggs produced at the Defendant's premises.

THE MATERIAL FACTS

6. This action arises from an outbreak of salmonella infections in Newfoundland and Labrador caused by eggs produced at the Defendant's premises in Nova Scotia.
7. Salmonella is a bacterium that, when ingested, can cause severe gastroenteritis called salmonellosis (aka Salmonella infection). Symptoms of salmonellosis include nausea, vomiting, diarrhea, abdominal pain, headache, dizziness, myalgia, and low-grade fever. Symptoms of salmonellosis typically develop within 6 to 72 hours of consuming contaminated food, and usually last for several days.
8. Salmonellosis and related complications may become serious and life threatening. Severe cases of salmonellosis can last much longer than several days. Long-term complications can include reactive arthritis, inflammatory bowel syndrome, and immunological deficiencies. In the most severe cases, people die.
9. Salmonella is a reportable disease; i.e., when a person tests positive, health care providers must notify the public health authority. Using salmonella samples isolated from ill individuals, the Public Health Agency of Canada employs a laboratory method called whole genome sequencing to identify whether ill individuals have the same genetic strain at the centre of an outbreak.
10. As of February 18th, 2021, there were 25 confirmed cases of salmonella infections in Newfoundland and Labrador linked to recalled eggs subject to the October 8th, 2020, October 9th, 2020, and December 12th, 2020 recalls from the Defendant's premises.

11. In September, 2020, the First Plaintiff purchased eggs from Coleman's grocery store in Springdale, Newfoundland and Labrador. These eggs were later subject of the recall mentioned in paragraph 10, above.
12. On September 19th, 2020, the First Plaintiff baked three lemon merengue pies using the Defendant's eggs. She gave one pie to Clyde and Deloris Compton, of Deer Lake, Newfoundland and Labrador, one pie to Herb and Bernice Bray, of South Brook, Newfoundland and Labrador, and kept the third pie for herself and her husband. In the days after baking the pies, the First Plaintiff consumed some pie.
13. On September 22nd, 2020, the First Plaintiff became very ill at approximately 3:00 AM with diarrhea and weakness. These symptoms did not subside, and at 10:00 AM, the First Plaintiff was transferred by ambulance to the hospital in Springdale. She was admitted to the hospital for treatment and investigation. On September 23rd, 2020, the First Plaintiff was transferred to the hospital in Grand Falls Windsor. Her condition upon arrival was poor, and her husband was asked by the attending physician whether he would wish for the First Plaintiff to be resuscitated if it became necessary.
14. On September 26th, 2020, the First Plaintiff was diagnosed with salmonella poisoning in her blood, urine and stool. She was discharged from hospital on September 30th, 2020, however on October 1st, 2020, the First Plaintiff was still experiencing uncontrollable diarrhea and weakness and slipped and fractured her ankle while rushing to the bathroom.
15. Over the next several weeks, the First Plaintiff was in and out of hospital, and was at one point admitted for two weeks and treated intravenously for dehydration and antibiotics. In total, she was admitted to hospital for 21 days. She continues to feel fatigue and weakness. As of May, 2021, she was still being treated with antibiotics and lost significant weight.
16. The Second Plaintiff, Clyde Compton, also consumed some of the pie given to him by the First Plaintiff and became severely ill. On September 21st, 2020, he was transported by ambulance to the hospital in Springdale. He and his wife (who was also ill) were later transported to the hospital in Grand Falls Windsor and were admitted. He was released the following day however he was readmitted on September 27th, 2020 for a further three days for severe dehydration. The Second Plaintiff has been on multiple medications since being poisoned, including the antibiotic Sulfatrim and Betahistine, for vertigo. As of February, 2021, salmonella was still present in his system. He has suffered weight loss and continues to experience physical and mental fatigue.

17. The Third Plaintiff, Herbert Bray, also consumed some of the pie given to him by the First Plaintiff and became severely ill. On September 22nd, after two days of suffering diarrhea, vomiting and lethargy, he attended the hospital at Springdale. In the following weeks he diagnosed and treated for salmonella poisoning, including ten days of intravenous treatment. He continues to suffer from weight loss and lack of energy, many months after being poisoned.
18. All six people who consumed a portion of the above-described pies fell ill to varying degrees.
19. On October 8th, 2020, the Canadian Food Inspection Agency (CFIA) issued the following recall regarding the Defendant's products:

“ ...

Recall details

Ottawa, October 8, 2020 - Hilly Acres Farm is recalling eggs from the marketplace due to possible Salmonella contamination. Consumers should not consume and distributors, retailers and food service establishments such as hotels, restaurants, cafeterias, hospitals and nursing homes should not serve, sell or use the recalled products described below.

...

Background

This recall was triggered by the company test results. The Canadian Food Inspection Agency (CFIA) is conducting a food safety investigation, which may lead to the recall of other products. If other high-risk products are recalled, the CFIA will notify the public through updated Food Recall Warnings.

The CFIA is verifying that industry is removing the recalled products from the marketplace.

...”

20. This recall was updated by the CFIA on October 9th, 2020 to include additional information about which products were subject to the recall.
21. On December 12th, 2020, CFIA issued another recall related to Hilly Acres Farm:

“ ...

Recall details

Ottawa, December 12, 2020 - Hilly Acres Farm is recalling eggs from the marketplace due to possible Salmonella contamination. Consumers should not consume and distributors, retailers, and food service establishments such as hotels, restaurants, cafeterias, hospitals, and nursing homes should not serve, sell, or use the recalled products described below.

The recalled products have only been sold in Newfoundland and Labrador.

Only eggs from Hilly Acres Farm with best before dates indicated in the table below where the lot code contains “N38” or where there is no lot code on the package are implicated by the recall.

...

Background

This recall was triggered by test results. The Canadian Food Inspection Agency (CFIA) is conducting a food safety investigation, which may lead to the recall of other products. If other high-risk products are recalled, the CFIA will notify the public through updated Food Recall Warnings.

The CFIA is verifying that industry is removing the recalled products from the marketplace.

... ”

CAUSE OF ACTION

22. The Defendant was negligent in the manufacturing, testing, selling, marketing, and/or distribution of the contaminated eggs and in the dissemination of the recall regarding the contaminated eggs and egg products.
23. The Defendant, at all material times, owed a duty of care to the Plaintiffs and Class Members to, among other things:
 - a. Ensure that the contaminated eggs were fit for their intended use;

- b. Ensure that the contaminated eggs were safe for consumption and that the consumption of such product would not cause illness or injury;
 - c. Ensure that there were no defects in the production of the contaminated eggs that were likely to give rise to injury in the ordinary course of use;
 - d. Conduct appropriate and regular testing, both before and after placing the contaminated eggs into the stream of commerce, to determine whether and to what extent the contaminated eggs posed serious health risks to consumers, including the risk of exposure to salmonella;
 - e. Properly, adequately, and fairly warn of the dangers inherent in the use of the contaminated eggs of which the Defendant had knowledge or ought to have had knowledge, both before and after placing the contaminated eggs into the stream of commerce, including the ingestion of the contaminated eggs would expose consumers to the risk of salmonella;
 - f. Monitor, investigate, evaluate and follow up on reports of adverse reactions to the contaminated eggs, including reports of salmonella infections;
 - g. Timely and properly inform Canadian regulatory agencies of any salmonella contamination identified in any of the contaminated eggs;
 - h. Ensure that any recall or notice program regarding the contaminated eggs communicated clearly to the public, in an understandable and timely manner, the particular products which were at risk of harm and the extent of the dangers; and to
 - i. Manufacture, package, label, test, import, distribute and sell the contaminated eggs in accordance with the Food and Drugs Act.
24. The scope of the Defendant's duty of care extended beyond the purchasers and consumers of the contaminated eggs to all persons who might reasonably be foreseen to suffer injury or damage if the Defendant failed to exercise reasonable care.
25. The Defendant, as manufacturer, co-manufacturer, producer and/or distributor of the contaminated eggs, intended for human consumption, owed a duty of care to the Plaintiffs and to other members of the Class to carefully monitor the safety and supply of its contaminated eggs and to ensure that they were free from contamination.
26. The circumstances of the Defendant being in the business of manufacturing and supplying consumer food products are such that the Defendant was in a position of legal proximity to the Class Members and therefore under an obligation to be mindful of their safety when manufacturing, processing and distributing products intended for human consumption.
27. It was reasonably foreseeable that a failure by the Defendant to monitor the safety of the manufacturing, processing and distribution of its contaminated eggs would cause harm to the Plaintiffs and other members of the Class.

28. The Defendant negligently breached its duty of care. The negligence includes, but is not limited to, the following:
- a. Failing to produce or maintain the contaminated eggs in a manner that would ensure the safety of those products;
 - b. Failing to prepare, prepare, preserve, or package the contaminated eggs in a manner that was safe and would not give rise to, exacerbate, or prevent the detection of any defects in the products (such as possible Salmonella contamination), including, but not limited to, failing to sufficiently separate different varieties or batches of eggs to avoid the risk of cross-contamination;
 - c. Failing to warehouse, store, handle or transport the contaminated eggs in a manner that was safe and would not give rise to, exacerbate, or prevent the detection of any defects in the products (such as possible salmonella contamination), including, but not limited to, failing to sufficiently separate different varieties or batches of eggs to avoid the risk of cross contamination;
 - d. Failing to implement adequate and regular testing to ensure that the contaminated eggs were safe for consumption and that consumption of such products would not cause illness or injury, including salmonella illness;
 - e. Failing to provide people using the contaminated eggs with timely, adequate, and/or fair warning of the dangers and risks associated with the use of the contaminated eggs, including that the ingestion of the contaminated eggs exposes consumers to the risk of salmonella infection;
 - f. Failing to give governmental authorities complete and accurate information as that information became available;
 - g. Failing to monitor, evaluate and act upon reports of salmonella infections arising from the use of the contaminated eggs in Newfoundland and Labrador and elsewhere;
 - h. Failing to properly supervise their employees and/or agents;
 - i. Applying reckless disregard for the health and safety of people consuming contaminated eggs.
29. The Defendant's conduct in committing these negligent acts and omissions in relation to the contaminated eggs has resulted in foreseeable, real, and substantial harm to the health, safety and property of the Plaintiffs and Class Members.
30. The Defendant knew, or ought to have known, that committing these negligent acts and omissions in relation to the contaminated eggs would cause the Plaintiffs and Class Members to suffer real and substantial harms, including but not limited to personal injuries.

31. The Plaintiffs and Class Members have suffered losses, damages, and/or injuries as a result of the Defendant's negligent conduct, including physical, psychological and economic harms.

PUNITIVE, AGGRAVATED AND/OR EXEMPLARY DAMAGES

32. The Plaintiffs plead that the Defendant has acted in such a high-handed, wanton and reckless manner, without regard to public safety, as to warrant a claim for punitive damages. In particular, the Defendant continued to maintain the recalled eggs in the stream of commerce and continued to market them as safe and failed to issue accurate and timely public warnings when it knew or should have known of the risks of contracting salmonella poisoning through ingestion of the contaminated eggs.

UNJUST ENRICHMENT

33. The Plaintiffs state that the Defendant was unjustly enriched as a result of the revenues generated from the sale of the recalled eggs, as outlined below:
- a. The Defendant obtained an enrichment through revenues and profit from the sale of the recalled eggs;
 - b. The Plaintiffs and members of the Class have suffered corresponding deprivation and losses; and
 - c. There is no juristic reason for the benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiffs and other members of the Class.

RELIEF SOUGHT

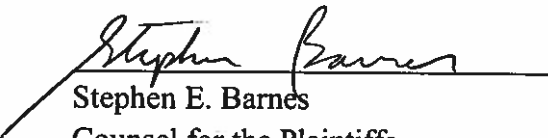
34. The Plaintiffs repeat the foregoing paragraphs and state that as a result of the Defendant's negligence, the Plaintiffs and the proposed Class Members have suffered losses.
35. The Plaintiffs therefore seek the following relief on their own behalf and on behalf of the Class:
- a. Damages for negligence;
 - b. Damages for pain and suffering and loss of enjoyment of life
 - c. An order for an aggregate money award pursuant to s. 29 of the Class Actions Act;
 - d. Aggravated, punitive and/or exemplary damages;
 - e. Special damages to be ascertained;
 - f. Costs of providing appropriate notice to Class members and administering this proposed class action for their benefit;

- g. Costs, including fees of expert witnesses in attending at discovery and/or trial, and HST on the same;
- h. Interest pursuant to the Judgement Interest Act, RSN 1990, c J-2; and
- i. Such further and other release as this Honourable Court deems just, equitable and appropriate in all of the circumstances

36. The Plaintiffs propose that this proceeding be tried at the Judicial Centre of Corner Brook, Newfoundland and Labrador

37. The Plaintiffs further state that service of this originating document is permitted on the Defendant outside the province of Newfoundland and Labrador without leave under Rule 6.07(1)(h) of the Rules of the Supreme Court, 1986, and is supported by the facts as set out above.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 14th day of May, 2021.



Stephen E. Barnes
Counsel for the Plaintiffs
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St. John's, NL A1C 1T2
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Fax: 709-739-6686
sbarnes@buckinghamlaw.ca

TO: The Defendant
Hilly Acre Farms
289 Millville Hwy
Millville, NS B1Y 2E1

ISSUED AT Corner Brook, in the Province of Newfoundland and Labrador, this 18th day of May, 2021



COURT OFFICER

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SECOND PLAINTIFF

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THIRD PLAINTIFF

AND:

HILLY ACRES FARM LIMITED

DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

NOTICE TO DEFENDANT

You are hereby notified that the plaintiff may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within thirty days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at 82 Mt. Bernard Avenue, P.O. Box 2006, Corner Brook, Newfoundland and Labrador, a defence and unless within the same time a copy of your defence is served upon the plaintiff or the plaintiff's solicitors' stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ _____ (such sum as may be allowed on taxation) for costs to the plaintiff or the plaintiff's solicitors within thirty days from the service of this notice upon you, then this proceeding will be stayed.

TO: The Defendant
Hilly Acre Farms
289 Millville Hwy
Millville, Nova Scotia
B1Y 2E1

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HILLY ACRES FARM LIMITED

DEFENDANT

BROUGHT UNDER THE CLASS ACTIONS ACT

AFFIDAVIT OF SERVICE

I, _____ of _____, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. On _____ at _____ A.M/P.M., I served _____ with the Statement of Claim by leaving a copy with _____ at _____.
2. I was able to identify the person by means of _____

_____.

SWORN TO at _____, in the
Province of Newfoundland and Labrador,
this ___ day of _____, 2021,
in the presence of:
