

T-1049-20
Court File No.: ID#1

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

KATE O'LEARY-SWINKELS

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	SEP 09 2020	
	NICOLE HRADSKY	
TORONTO, ON		

Plaintiff

- and -

MASONITE INTERNATIONAL CORPORATION, MASONITE CORPORATION, JELD-WEN, INC., JELD-WEN HOLDING, INC., and JELD-WEN OF CANADA, LTD.

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 a solicitor acting for you are required prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN THIRTY DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

SEAL

JAMES J. HARRIS
JAMES J. HARRIS
JAMES J. HARRIS

Date: September 9, 2020

Issued by _____
(Registry Officer)

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Toronto, Ontario M5V 3L6

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- AND TO: MASONITE CORPORATION**
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- AND TO: JELD-WEN, INC.**
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- AND TO: JELD-WEN HOLDING, INC.**
2645 Silver Crescent Drive
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- AND TO: JELD-WEN OF CANADA, LTD.**
333 Bay Street, Suite 2900
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CLAIM

1. The Plaintiff claims on behalf of herself and other persons in Canada who purchased Interior Molded Doors (as defined in paragraph 3, below) from at least as early as October 24, 2012 until at least the present (the “Conspiracy Period”):
 - (a) a declaration that the Defendants conspired and agreed with each other and their other unknown co-conspirators to raise, maintain, fix and/or stabilize the price of Interior Molded Doors in North America during the Conspiracy Period;
 - (b) general damages and special damages at an amount to be determined at trial for loss and damage suffered because of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“*Competition Act*”);
 - (c) costs of the investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
 - (d) pre-judgment interest and post-judgment interest, compounded, or pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7; and
 - (e) such further and other relief as this Honourable Court deems just.

SUMMARY OF CLAIM

2. This action arises from a conspiracy to fix, maintain, increase or control prices of Interior Molded Doors sold in Canada and throughout North America.
3. An Interior Molded Door is a type of interior composite wood door used primarily in residential construction, including the construction and remodelling of multi-family and apartment housing, for closets, rooms, and/or hallways. An interior composite wood door

is manufactured using wood by-products in a process that involves inserting a frame and a hollow or solid core between two molded doorskins. The doorskins used to manufacture an interior composite wood door generally come in three types: hardboard, veneered and molded.

4. Interior Molded Doors, the most popular type of interior door in North America, have two doorskins. Doorskins are made from a high-density fibrous mat formed into a raised panel design, under extreme pressure and high temperature, to mimic the look of paneled wood doors. The market for Interior Molded Doors is closely connected to the upstream market for doorskins. Doorskins constitute the largest input cost of an Interior Molded Door, making up to 70% of the manufacturing cost.
5. During the Conspiracy Period, the Defendants, their unnamed co-conspirators, and their senior executives, participated in illegal and secretive discussions and made agreements relating to prices, market share divisions, and/or production levels of Interior Molded Doors including agreements to implement a series of price increases.
6. The Defendants and their unnamed co-conspirators were aware and intended that the alleged conspiracy would result in increased prices for Interior Molded Doors.
7. As a direct result of the unlawful conduct alleged herein, the Plaintiff and other members of the proposed class paid artificially inflated prices for Interior Molded Doors manufactured, marketed, sold and/or distributed during the Conspiracy Period and have thereby suffered losses and damages.

THE PLAINTIFF

8. The Plaintiff, Kate O'Leary-Swinkels is an individual resident in Dublin, located in the municipality of West Perth in the Province of Ontario. During the Conspiracy Period, she purchased Interior Molded Doors manufactured by one or more of the Defendants for use in her custom-built new home.

THE DEFENDANTS

9. Where an entity within a corporate family of Defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, all members of their respective corporate families.

Masonite Defendants

10. Masonite International Corporation is a Canadian corporation incorporated under the laws of British Columbia. Its registered office is located in Vancouver, British Columbia; however, its principal executive offices are located in Concord, Ontario.
11. In or around July 2011, pursuant to an amalgamation under British Columbia's *Business Corporations Act*, SBC 2002 C 57, Masonite Inc. (the former parent company of Masonite International Corporation) amalgamated with Masonite International Corporation to form Masonite Inc., which later changed its name to Masonite International Corporation. During the Conspiracy Period, Masonite International Corporation manufactured, marketed, sold and/or distributed Interior Molded Doors to customers throughout Canada and elsewhere, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

12. Masonite Corporation is a Delaware corporation with its principal place of business located in Tampa, Florida. Masonite Corporation is a wholly owned subsidiary of Masonite International Corporation and is registered with the Virginia State Corporation Commission as a foreign corporation and maintains a registered agent in Virginia. During the Conspiracy Period, Masonite Corporation manufactured, marketed, sold and/or distributed Interior Molded Doors to customers throughout Canada and elsewhere, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
13. The business of each of Masonite International Corporation and Masonite Corporation (collectively "Masonite") are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Interior Molded Doors in Canada and elsewhere, and for the purposes of the conspiracy described hereinafter.

JELD-WEN Defendants

14. JELD-WEN Holding, Inc. ("JELD-WEN Holding") is a Delaware corporation with its principal place of business located in Charlotte, North Carolina. During the Conspiracy Period, JELD-WEN Holding manufactured, marketed, sold and/or distributed Interior Molded Doors to customers throughout Canada and elsewhere, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
15. JELD-WEN, Inc. is a Delaware corporation with its principal place of business located in Charlotte, North Carolina. It is a wholly owned subsidiary of JELD-WEN Holding. At the time of the 2012 merger with CMI Manufacturing Inc. ("CMI", see paragraph 25), JELD-WEN, Inc. was an Oregon corporation. During the Conspiracy Period, JELD-WEN, Inc. manufactured, marketed, sold and/or distributed Interior Molded Doors to customers

throughout Canada and elsewhere, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

16. JELD-WEN of Canada, Ltd. (“JELD-WEN of Canada”) is an Ontario corporation with its registered office located in Toronto, Ontario. It is a wholly owned subsidiary of JELD-WEN Holding. During the Conspiracy Period, JELD-WEN of Canada manufactured, marketed, sold and/or distributed Interior Molded Doors to customers throughout Canada and elsewhere, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
17. The business of each of JELD-WEN Holding, JELD-WEN, Inc., and JELD-WEN of Canada (collectively “JELD-WEN”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Interior Molded Doors in Canada and elsewhere, and for the purposes of the conspiracy described hereinafter.

Unnamed Co-Conspirators

18. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the Defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

19. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including the other named Defendants and any unnamed co-conspirator.

THE INTERIOR MOLDED DOOR INDUSTRY

20. The Interior Molded Door industry has several characteristics that served to facilitate the alleged conspiracy, including market concentration, high barriers to entry, and price inelasticity.

Market Concentration

21. In the last few decades, there has been considerable consolidation among Interior Molded Door manufacturers.
22. By early 2000, Premdor, Inc. and Premdor U.S. Holdings, Inc. (collectively, "Premdor") were the dominate manufacturers in the Interior Molded Door market. JELD-WEN was the only other large Interior Molded Door manufacturer. However JELD-WEN became vertically-integrated, manufacturing both doorskins and Interior Molded Doors, after purchasing a number of independent Interior Molded Door manufacturers and manufacturing plants. Masonite (wholly owned by International Paper at the time) was one of the largest players in the doorskin market. It sold its doorskins to non-vertically integrated Interior Molded Door manufacturers such as Premdor.
23. In 2000, Masonite's former parent company, International Paper, announced that it intended to sell Masonite to Premdor. In 2001, Premdor acquired Masonite, creating a vertically integrated manufacturer of doorskins and Interior Molded Doors. The U.S. Department of Justice permitted Premdor to acquire Masonite on the condition that Premdor divest its doorskin manufacturing plant in Pennsylvania. The divestiture created a new entity called CMI Manufacturing Inc. ("CMI"). CMI was to be a competitive force in the doorskin market.

24. The pattern of consolidation in the North American Interior Molded Door industry continued after Premdor acquired Masonite, with JELD-WEN, Masonite, and the newly formed CMI continuing to acquire Interior Molded Door manufacturers. For example:
- (a) In 2005, CMI acquired C&S Door, a door manufacturer. As a result of this acquisition, CMI became a vertically-integrated manufacturer.
 - (b) In February 2010, CMI acquired Illinois Flush Door Co., a manufacturer and distributor of a full line of interior doors.
 - (c) In March 2010, Masonite acquired LEDCO, Inc. (previously known as Lake Erie Door Company), a premier interior door manufacturer.
 - (d) In October 2010, Masonite acquired Lifetime Doors, Inc., an interior door manufacturer specializing in molded, veneer, prefinished, and bifold doors.
25. In or around October 2012, JELD-WEN acquired CMI, removing the alleged safeguard on competition in the doorskin market. JELD-WEN's acquisition of CMI initially resulted in a duopoly, whereby the JELD-WEN and Masonite defendants virtually controlled the entire doorskin market.
26. Following the 2012 acquisition of CMI by JELD-WEN, the Defendants controlled over 72% of the Interior Molded Door market in North America, with the remaining market share divided among several smaller non-vertically integrated Interior Molded Door manufacturers. JELD-WEN and Masonite were the only two suppliers that sold doorskins to independent Interior Molded Door manufacturers in North America.

27. More recently, the Defendants sought to eliminate competition in the Interior Molded Door market by halting their practice of supplying doorskins to smaller Interior Molded Door manufacturers. In 2014, Masonite announced that it would no longer sell doorskins to other Interior Molded Door manufacturers that competed against it. This left JELD-WEN as the sole supplier in the doorskin market.
28. As a result of market consolidation, the Defendants collectively controlled approximately 85% of the North American Interior Molded Door market during the Conspiracy Period. In addition, the Defendants were the only manufacturers of doorskins (the primary component of Interior Molded Doors) in North America.

Barriers to Entry

29. The market for the manufacture and sale of Interior Molded Doors is subject to high barriers to entry. The manufacturing process is complex and requires significant start-up capital expenditures on plants and equipment, regulatory approvals, industry knowledge, and infrastructure for distribution. Additionally, because doorskins are a necessary input for Interior Molded Doors, entry into the Interior Molded Door market requires access to doorskins.
30. Entry into the doorskin market requires significant start-up capital expenditures on plants and equipment that can manufacture a variety of molded door styles, intellectual property and trademark licences, and infrastructure for distribution. An entrant into the doorskin market would need to be able to supply a full range of doorskin models to Interior Molded Door manufacturers because supply contracts are sole-source contracts. This means that an Interior Molded Door manufacturer will not enter into a supply agreement with a new doorskins manufacturer unless it can supply a full range of doorskins.

31. The high barriers to entry in both the Interior Molded Door and doorskin markets ensured that no new competitors would be able to undermine the Defendants' collusive pricing.

Vertical Integration

32. Doorskins are a critical component of Interior Molded Doors. As a result, the doorskin market and the Interior Molded Door market are inextricably connected. A new entrant into the Interior Molded Door market would need to acquire access to doorskins from one of a limited number of doorskin manufacturers. During the Conspiracy Period, the vertically-integrated Defendants, who manufacture both Interior Molded Doors and doorskins, controlled the doorskin market in North America.

Price Inelasticity and Interchangeability

33. There are no close substitutes for Interior Molded Doors. Interior Molded Doors are a necessity in all residential buildings (including the residential construction industry), residential renovations, and/or as interior door replacements. Further, Interior Molded Doors are functionally interchangeable. Interior Molded Doors produced by one Defendant do not differ significantly in quality, appearance, or use from that produced by another Defendant. As a result, competition in the Interior Molded Door market is largely based on price.

PRICES DURING THE CONSPIRACY PERIOD

34. The Defendants and their named and unnamed co-conspirators engaged in an illegal price-fixing conspiracy that resulted in artificially increased prices for Interior Molded Doors. This was accomplished by implementing significant and uniform price increases (by percentages) beginning in 2012.

35. During the Conspiracy Period, the Defendants increased the prices of Interior Molded Doors at least eight times. The price increases were a result of an agreement between the Defendants to fix prices, which prevented the decline of Interior Molded Door prices, stabilized Interior Molded Door prices, and/or increased Interior Molded Door prices. In addition, the Defendants agreed to reduce the supply of Interior Molded Doors, control the supply of doorskins, and/or refuse to provide doorskins to third-party manufacturers (see paragraph 27). But for the illegal price-fixing conspiracy, prices of Interior Molded Doors would have been significantly lower, would have declined faster, would not have been stable, and/or would not have increased in the manner that they did.
36. During the Conspiracy Period, the Defendants jointly controlled a substantial portion of the Interior Molded Door market. Non-cartel firms constituted a very small share of the market and lacked the ability to increase production of Interior Molded Doors to a degree that would have allowed them to steal market share from the Defendants in response to the Defendants' higher prices.
37. The Defendants' high market share and total control of the market, combined with high barriers to entry, price inelasticity, and the capacity constraints of the non-cartel firms, meant that the Defendants had market power and were able to increase Interior Molded Door prices above the competitive level during the Conspiracy Period.
38. Relying on the higher prices set by Defendants, non-cartel firms were able to, and did, maximize their profits by charging higher prices for Interior Molded Doors than they would have in a competitive market. The non-cartel firms' conduct in charging higher prices was a direct response to the higher Interior Molded Door prices caused by the Defendants' collusive conduct and exercise of their collective market power. But for the conspiracy, the

Defendants would have charged lower, competitive prices, and the non-cartel firms would have needed to follow those lower prices or risk losing market share.

39. During the Conspiracy Period, persons who directly or indirectly purchased Interior Molded Doors manufactured by non-cartel firms (“Umbrella Purchasers”) suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that would have been obtained in a competitive market.
40. The Defendants were aware and intended that the alleged conspiracy would result in non-defendant manufacturers adjusting their prices to supra-competitive levels in response to the conspiracy prices, and that Umbrella Purchasers would therefore pay supra-competitive prices for Interior Molded Doors during the Conspiracy Period.

THE CONSPIRACY

Breaches of Part VI of the *Competition Act*

41. The Plaintiff alleges that during the Conspiracy Period, the Defendants and their unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase or control the prices of Interior Molded Doors sold to customers in Canada and elsewhere. As a result of the unlawful conduct alleged herein, the Plaintiff and other members of the proposed class paid supra-competitive prices for Interior Molded Doors.
42. The Defendants and their unnamed co-conspirators carried out the conspiracy by:
 - (a) participating in meetings, conversations and communications in North America to discuss coordinating prices of Interior Molded Doors;

- (b) agreeing, during those meetings, conversations, and communications, on the prices of Interior Molded Doors;
- (c) agreeing, during those meetings, conversations, and communications, to refrain from competing on prices for Interior Molded Doors;
- (d) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America;
- (e) selling Interior Molded Doors in Canada and elsewhere for the agreed upon prices, controlling discounts, and otherwise fixing, increasing, maintaining or stabilizing prices for Interior Molded Doors in Canada and elsewhere;
- (f) allocating markets, customers, and/or setting specific sales volumes of Interior Molded Doors that each Defendant and unnamed co-conspirator would supply in Canada and elsewhere;
- (g) agreeing to reduce the supply of Interior Molded Doors and/or reduce the supply of doorskins in Canada and elsewhere;
- (h) accepting payment for Interior Molded Doors sold in Canada and elsewhere at collusive and supra-competitive prices;
- (i) communicating secretly, in person and by telephone, to discuss and fix prices and volumes of sales of Interior Molded Doors;
- (j) exchanging information regarding the prices and volumes of sales of Interior Molded Doors for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;

- (k) engaging in meetings, conversations, and communication for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing scheme;
 - (l) actively and deliberately taking active steps to conceal the unlawful conspiracy from their customers; and
 - (m) disciplining any corporation that failed to comply with the conspiracy.
43. The Defendants and their unnamed co-conspirators were aware and intended that the conspiracies described herein would result in increased prices for Interior Molded Doors.
44. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
45. The conduct described in paragraph 42 constitutes offences under Part VI of the *Competition Act*, in particular, section 45(1) of the *Competition Act*. Further, contrary to section 46(1) of the *Competition Act*, the Defendants that carry on business in Canada implemented foreign directives from the other Defendants and their unnamed co-conspirators communicated to them for the purpose of giving effect to the anti-competitive conduct particularized herein. The Plaintiff claims loss and damages under section 36(1) of the *Competition Act* in respect of such unlawful conduct

Damages

46. The Plaintiff and other members of the proposed class have suffered the following damages as a result of the conspiracy alleged herein:
- (a) price competition has been restrained or eliminated with respect Interior Molded Doors sold directly or indirectly to the Plaintiff and other members of the proposed class in Canada;
 - (b) the prices of Interior Molded Doors sold directly or indirectly to the Plaintiff and other members of the proposed class have been fixed, maintained, increased or controlled at artificially inflated levels;
 - (c) the Plaintiff and other members of the proposed class have been deprived of free and open competition for Interior Molded Doors in Canada.
47. By reason of the wrongful conduct alleged herein, the Plaintiff and the members of the proposed class have sustained losses by virtue of having paid higher prices for Interior Molded Doors than they would have paid in the absence of the illegal conduct of the Defendants and their co-conspirators. As a result, the Plaintiff and other members of the proposed class have suffered loss and damage in an amount not yet known but to be determined.

48. The Plaintiff proposes that this action be tried at Toronto, Ontario.

September 9, 2020



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